104

VERIFICATION OF ELIGIBILITY FOR EMPLOYMENT AND BENEFITS

Y 4. J 89/1: 104/14

Verification of Eligibility for Emp...

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND CLAIMS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

MARCH 30, 1995

Serial No. 14

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CONTENTS

HEARING DATE

Page

March 30, 1995 1

OPENING STATEMENT

Smith, Hon. Lamar, a Representative in Congress from the State of Texas, and chairman, Subcommittee on Immigration and Claims 1

WITNESSES

Antolin, Joseph A., deputy director of field operations, Illinois Department of Public Aid 87

Bach, Robert L., Executive Associate Commissioner, Policy and Planning, U.S. Immigration and Naturalization Service, accompanied by John E. Nahan, Director, Systematic Alien Verification for Entitlements Program 29

Diaz, Nelson A., General Counsel, U.S. Department of Housing and Urban Development 45

Fragomen, Austin T., Jr., Esq., chairman of the board, American Council on International Personnel 81

Johnson-Bullard, Esperita, eligibility supervisor, Division of Social Services, Department of Human Services, City of Alexandria, VA 100

Jordan, Hon. Barbara, Chair, Commission on Immigration Reform, accompanied by Susan Martin, Executive Director 5

Ludwig, William E., Administrator, Food and Consumer Service, U.S. Department of Agriculture 37

Primus, Wendell E., Deputy Assistant Secretary for Human Services Policy, U.S. Department of Health and Human Services, accompanied by Sandy Crank, Associate Commissioner, Social Security Administration, and Mack Storrs, Division Director for AFDC Policy 40

Velde, Richard, attorney at law, Washington, DC 75

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Antolin, Joseph A., deputy director of field operations, Illinois Department of Public Aid: Prepared statement 89

Bach, Robert L., Executive Associate Commissioner, Policy and Planning, U.S. Immigration and Naturalization Service:

- Excerpts from the Federal Register of April 26, 1995 60
- Information given to the INS by the Social Security Administration and INS use of that information 67
- Numbers concerning investigations 72
- Prepared statement 32
- Systematic Alien Verification for Entitlements (SAVE) Program 58

Diaz, Nelson A., General Counsel, U.S. Department of Housing and Urban Development: Prepared statement 47

Fragomen, Austin T., Jr., Esq., chairman of the board, American Council on International Personnel: Prepared statement 83

Johnson-Bullard, Esperita, eligibility supervisor, Division of Social Services, Department of Human Services, City of Alexandria, VA: Prepared statement 101

Jordan, Hon. Barbara, Chair, Commission on Immigration Reform:

- Letter dated July 18, 1995, to Congressman Becerra 27
- Prepared statement 8

Page

Ludwig, William E., Administrator, Food and Consumer Service, U.S. Department of Agriculture: Prepared statement 38
Primus, Wendell E., Deputy Assistant Secretary for Human Services Policy, U.S. Department of Health and Human Services:
Errors related to recipient citizenship status 57
Information concerning queries 70
Prepared statement 42
Velde, Richard, attorney at law, Washington, DC: Prepared statement 76

APPENDIX

Statement of Sharon M. Hughes, executive vice president, National Council of Agricultural Employers 115

VERIFICATION OF ELIGIBILITY FOR EMPLOYMENT AND BENEFITS

THURSDAY, MARCH 30, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2237, Rayburn House Office Building, Hon. Lamar S. Smith (chairman of the subcommittee) presiding.

Present: Representatives Lamar Smith, Elton Gallegly, Sonny Bono, Ed Bryant of Tennessee, John Bryant of Texas, Howard L. Berman, and Xavier Becerra.

Also present: Cordia A. Strom, chief counsel; Edward R. Grant, counsel; George Fishman, assistant counsel; Judy Knott, secretary, and Paul Drolet, minority counsel.

OPENING STATEMENT OF CHAIRMAN SMITH

Mr. SMITH. The Subcommittee on Immigration and Claims will come to order.

Let me welcome everyone present and express my appreciation for their interest in this subject of the hearing today.

I have to say to you all, regrettably, that we're short on Members, but long on interest in this subject. We're short on Members because Republicans are having a closed conference, mandatory attendance, and votes will be taken. So I suspect that they will arrive in about an hour. I know the Democrats are also having a whip meeting, and so we've lost several Members to that as well. But we appreciate the Members who are present and we certainly appreciate all the witnesses and guests who are here as well.

Verification of eligibility for employment and public benefits is critical to our efforts to reform immigration laws. Improved verification is just as vital to our overall enforcement strategy as placing Border Patrol agents directly on the border. This is not a new concept. The original version of the Immigration Reform and Control Act of 1986 included strong provisions for mandatory identification and verification systems. The authors of IRCA understood that secure verification was necessary to complement employer sanctions and to prevent ineligible aliens from being given public benefits.

Congress, unfortunately, did not see the value of this approach at that time. The strong verification provisions in IRCA were dropped in the bill and weaker verification systems were adopted. We are now living with the consequences. The employer sanction

system does not work as it should. Employers are confused by the large number of documents that can establish work eligibility. Traffic in fraudulent documents undermines the credibility of the system. Illegal aliens are being given benefits to which they are not entitled.

One of our earlier hearings focused on the question of visa overstays, temporary visas, bidders, who come to the United States on valid visas, but then stay here permanently to work or collect benefits. We heard at the hearing that since it is very difficult to stop such people at the border, the key is to remove their ability to obtain jobs. An effective verification system robs us of an essential tool to prevent this abuse.

The U.S. Commission on Immigration Reform has stated that reducing the attraction of the employment magnet is the best way to slow illegal immigration. In its 1994 report, the Commission stated that a simpler, more fraud resistant system for verifying work authorization is central to the effective enforcement of employer sanctions. The Commission recommended that a computerized registry be established using data provided by the Social Security Administration and the Immigration and Naturalization Service.

These recommendations are genuine breakthroughs in the debate regarding immigration enforcement. The Commission argued convincingly that a properly designated registry would not violate the privacy or civil liberties of employees. As the Commission noted, these are legitimate concerns, but for too long they have been permitted to foreclose discussion of steps needed to improve the verification process.

Just as important as employment verification is the issue of benefits verification. Illegal aliens have long been ineligible for Federal benefits programs. The American people are justifiably outraged when some illegal aliens compound their violation of the immigration laws by receiving these Federal benefits.

IRCA established requirements that Federal benefit programs check the immigration status of aliens applying for benefits. The affected programs include Aid to Families with Dependent Children, Medicaid, and Food Stamps. The system that is used, called SAVE for Systematic Alien Verification for Entitlements, is actually similar in some respects to a computerized registry for eligibility. But as the Commission on Immigration Reform pointed out, SAVE has one fundamental flaw. It depends on applicants to honestly state whether they are citizens or noncitizens. Those who claim to be citizens are not checked through the SAVE data base. They need only to present a document, such as a birth certificate, to claim citizenship. Reliance on such documents is an invitation to fraud.

SAVE also is dependent on INS data bases that are sometimes inaccurate or incomplete. We understand that the INS is taking steps to address these problems, but, as the Commission concluded, a more dramatic restructuring of verification systems will be necessary.

Thanks to the awareness of the American public and the recommendations of the Commission, we now have a historic opportunity to improve the verification systems for employment and ben-

efits. Failure to seize this opportunity would be a terrible blow to immigration enforcement efforts.

And we must act decisively. The Commission has called for pilot projects to test the new verification system, but the existence of pilot projects cannot become an excuse for delay or inaction in establishing a reliable nationwide verification system. The timetable should be as short as possible, and real deadlines should be set. In short, Congress must act to ensure that our verification systems do what they are intended to do: remove the magnet of employment and public benefits for illegal aliens.

Only by using improved verification systems can we reduce illegal immigration, eliminate discrimination in the workplace, and prevent illegal aliens from taking jobs and receiving Federal benefits.

I now recognize the gentleman from Texas and ranking minority member, Mr. Bryant.

Mr. BRYANT of Texas. Thank you, Mr. Chairman.

I'm a supporter of establishing a very up-to-date and workable verification system. I have been for quite some time and welcome the hearing today. I also look forward to hearing from my fellow Texan and much admired former Member, Barbara Jordan, to talk to us about what the Commission has found in this area. Obviously, I don't think we're going to make any progress on the Hill this year on immigration, illegal immigration, illegitimate access to benefits, and so forth, unless we can deal with verification. And so the hearing today should be of great help to us, and I look forward to working with you and fashioning a solution to this problem.

Mr. SMITH Thank you, John.

The gentleman from California, Mr. Berman, is recognized.

Mr. BERMAN. Well, thank you, Mr. Chairman.

I'm interested in this hearing. I think, conceptually, getting an effective verification system, perhaps a system like the Commission proposed, fills the very significant void in our problem. You can talk about proposition 187's and we can fight about benefits and we can talk about them, but unless you've dealt with the issue of verification, all those initiatives and all those propositions and all those proposals are really pretty meaningless.

But there are a number of questions about the verification system, and I think they need to be gone through in terms of costs, in terms of effectiveness, in terms of how to constrain their use so they are not misused, in terms of dealing with discriminatory selection of who has to demonstrate verification, and in terms of what happens when whatever system is developed turns out excluding—to exclude someone who should, in fact, have been eligible for the job or the benefit program. So perhaps this hearing is a chance to go through some of those issues.

Mr. SMITH. Thank you.

The gentleman from California, Mr. Becerra, is recognized.

Mr. BECERRA. Thank you, Mr. Chairman.

I wish to thank the chairman, as I have in the past, for convening these particular hearings. It's a good opportunity for us for this session to have an understanding of what the issue of immigration means for not just this Congress and its legislation, but, obviously, the American people.

I want to thank the Chair, the Commission, Ms. Jordan for her thoughtful efforts, and also that of the Commissioners, and, of course, the Executive Director, Susan Martin, for all their efforts to try to come up with a very thorough analysis of the issue of not just undocumented immigration, but also legal immigration as well.

I have expressed in the past some trouble that I have with the telephone verification system. I do believe that we must make sure that we don't get ourselves on a path toward a national ID system, if, in fact, that's where we head, and I don't believe that we have yet heard the answers from some of the folks in the different agencies and the experts that we have both the moneys and the wherewithal to make sure we have a clean and perfected system for our data base, so that we can go ahead, if we do get on the path of some type of verification system, that we can go ahead and ultimately have some type of facility to be able to document who should and who should not be working in this country.

I do wish to thank the Commission for its thorough analysis on the issue of legal immigrants. For quite some time, the issue of immigration has been, to some degree, I think, clouded by the issue of those who come into this country without authorization, and I think in many ways it has now been reflected in some of the attitudes and some of the legislation that has been proposed not just in Congress, but throughout this Nation in State legislatures to attack legal immigrants who are paying taxes—I say this and I'll say it again—who pay taxes. They represent this country in time of war in our armed services. They abide by every law that every citizen must abide by, and in every respect they are trying to fulfill the American dream. Yet, here we find that legal immigrants, people who are on their road to becoming U.S. citizens, are paying the price for immigration by those who don't have the authority to be in the country. I think that's shameful, and I hope that the report that the Commission produced can be used as a benchmark to make some determinations not just on undocumented immigration, but also legal immigration.

Mr. BERMAN. Would the gentleman yield just on that point?

Mr. BECERRA. Of course.

Mr. BERMAN. I thank him for yielding.

I note the passage of the bill last week which made ineligible benefits for illegal immigrants with an exception, and I think the gentleman should be sensitive to the fact that the majority that decided to pass that bill decided to protect the rights of immigrant foreign guest workers who pick our agricultural crops to be eligible for all those benefit programs, a particular interesting display of compassion for one very specialized group.

[Laughter.]

Mr. BECERRA. And I think that is something to note for the record.

I want to make one last point, and this is something I happened to have heard on the news on NPR, which we also know is in some jeopardy as well, but NPR did a very, I thought, cogent report on the issue of the United States for the first time, I understand, submitting itself to the jurisdiction of the international body that deals with human rights, the Human Rights Commission of the United

Nations, and actually going before the body to discuss the United States' own performance on the issue of human rights. And I thought that was tremendously forward for this country. We have been for decades a leader in the area of human rights, but for us, as the leader in the free world, to also consent to go before this body and say to the world that we are willing to not only be the leader, but also be examined and always perfect our own particular work in that area I thought was a tremendous step forward, and I want to applaud the administration for that particular act that it took.

I know that there was some criticism of the United States in some aspects of its human rights policies. Specifically, things that were mentioned included proposition 187 in California and other immigrant issues that have come up in this Nation that have, to some degree, I think, blemished our human rights record. But I do want to acknowledge that I think the administration has taken a valiant step forward in recognizing that not only is it the leader on the issues of human rights, but it also should be willing to subject itself to criticism and critique on the issue of human rights.

So, Mr. Chairman, thank you very much for the opportunity to make an opening statement.

Mr. SMITH. Thank you, Mr. Becerra.

Would our first panelist, Professor Jordan, please come forward. And while you're on your way to the table, let me thank you again for being a repeat witness for us, and we always appreciate hearing from you. We appreciate the time you're willing to give us as well.

Also, once again, I'd like to point out that the job you have done as Chairman has just been nothing short of miraculous. To have taken individuals from diverse backgrounds, diverse political beliefs, and to have forged near consensus on so many controversial issues is something that we would love to emulate on this panel, among other things. And, as I mentioned earlier, we appreciate not only the job you're doing, but you're acting really as an icebreaker for us on this issue in so many ways.

Our first panelist is Prof. Barbara Jordan, Chair of the Commission on Immigration Reform, accompanied by Dr. Susan Martin, the Executive Director of the Commission.

And, without objection, your complete statement will be made a part of the record. And if you could summarize your statement in 10 minutes, that would be helpful.

STATEMENT OF HON. BARBARA JORDAN, CHAIR, COMMISSION ON IMMIGRATION REFORM, ACCOMPANIED BY SUSAN MARTIN, EXECUTIVE DIRECTOR

Ms. JORDAN. I assure you I will do that. Mr. Chairman and members of the subcommittee, thank you for letting me come back on behalf of my fellow Commissioners. I'm accompanied, as you see, by Susan Martin, our Executive Director, and we're prepared to answer any questions that you have after my testimony here is concluded. As you noted, Mr. Chairman, we are a bipartisan Commission, and we appreciate the support we have received from this committee, in particular, because what we do is simply void if you, the implementers, do not take action and make them become law.

So thank you very much for the attention you are paying to the issue.

As you requested, I'm going to focus today on worksite verification. As we previously testified, the Commission is convinced that more effective worksite enforcement is essential in deterring illegal immigration. We concluded, however, that the current verification procedures impede such deterrence.

The Commission set a number of criteria by which we measure options to improve verification. First, a new system should be more reliable and less susceptible to unfair immigration-related employment practices than the present one. Any solution will have to take into account the present one. The documents—any solution will have to take into account that most documents can now be counterfeited within a relatively short time and with relatively small cost. Employers generally do not have time or expertise to recognize counterfeit documents, and, therefore, the employers require a simple and effective way to pinpoint and sight these people presenting themselves to the employer for employment who is not authorized to work.

The new system will need to apply not only to aliens, but also to U.S. citizens. Otherwise, problems of fraud could continue. For instance, illegal aliens could claim to be U.S. citizens and our unfair immigration-related employment practices may increase. Employers could set different documentation standards for all foreign-looking and foreign-sounding individuals.

Now the second criteria: the new system should meet civil liberties and privacy standards. The new verification process should provide protection against the use of the system for purposes other than those specified in law. The verification system should protect the privacy of the information to be used in verifying work authorization.

Third, the system should lessen the time, resources, and paperwork spent by employers in verifying work authorization. Any new system should be simple to use and require little paperwork, as little as possible. It should be so simple in overall design that enforcement may focus on substantive violations and not become preoccupied with paperwork violations rather than the knowing hire of unauthorized workers.

Now the fourth criteria: the new system should be as cost-effective as possible. Given that illegal aliens represent at most a very small proportion of the total U.S. labor force, the Commission does not think it appropriate to recommend strategies with costs out of proportion to the problem.

To improve verification without undue costs is possible, we believe, if a new verification system builds to the extent possible on the existing responsibilities, capabilities, and data systems of Federal agencies. Having considered dozens of options against these criteria, the Commission believes the most promising option to be a secure, nondiscriminatory verification computerized registry using the data provided by the Social Security Administration and the Immigration and Naturalization Service.

As envisioned by the Commission, the computerized registry would be used to verify that a Social Security number is valid and has been issued to an individual who is being hired. The procedure

should be simple. The employer checks the information provided by the worker against the information in the computer registry. If it matches, the employer receives a confirmation number that becomes his or her proof of compliance. If there is no match, a secondary verification takes place to make sure it is not just computer error. The employer continues employment of the worker until the secondary verification is completed.

The Commission believes the key to this process is the Social Security number. For decades, all workers have been required to provide employers with their Social Security numbers. The computerized registry would add only one step to this existing requirement: an employer check that the Social Security number is valid and issued to someone authorized to work in the United States.

While we are convinced that the computer registry is the best option, the Commissioners were unanimous that the option must be put to rigorous testing before it becomes national policy. The Commission, therefore, recommends that the President initiate and evaluate pilot programs using the proposed computerized verification system in five States with the highest levels of illegal immigration, as well as several less affected States.

What will a pilot program do? It will permit the testing of various approaches to use the proposed verification system, provide needed information about the advantages and disadvantages enforced of various approaches, develop and evaluate means to protect civil rights and civil liberties, ensure that any potential obstacles, such as the quality of the data used in the registry, are addressed prior to national implementation.

In particular, the pilots should test the best means of determining the identity of the individual presenting a Social Security number. We propose three possibilities: a pure telephone verification process using personal identifiers; a tamper-resistant driver's license, as is now issued in some States, and a counterfeit-resistant Social Security card which includes identifying information such as a photograph.

The Commission recommends that these projects be undertaken in the high impact States because that is where the bulk of the illegal alien problem is. We do not recommend that these pilots be undertaken throughout all or any part of the five States immediately. Pilot projects should start small. At each step we should have results to determine whether and how to expand them. Key to an effective pilot effort is a plan for an objective evaluation. The evaluation should include measures and procedures to determine whether current problems related to fraud, discrimination, and excessive paperwork requirements for employers are effectively overcome without imposing undue costs on the Government, employers, or employees. The evaluation should pay particular attention to the effectiveness of the measures used to protect civil liberties and privacy.

Mr. Chairman, as you note, my written testimony is with you and there are further details about the Commission's recommendation on verification of work authorization. And I will answer any questions at this time.

[The prepared statement of Ms. Jordan follows:]

PREPARED STATEMENT OF HON. BARBARA JORDAN, CHAIR, U.S. COMMISSION ON IMMIGRATION REFORM

Mr. Chairman and Members of the Subcommittee, on behalf of my fellow members of the U.S. Commission on Immigration Reform, I want to thank you for this opportunity to testify. This bipartisan Commission recognizes and deeply appreciates the support which we have received from Congress, and this Subcommittee in particular.

In our first report to Congress last fall, entitled *U.S. Immigration Policy: Restoring Credibility,* we sought to recommend a comprehensive strategy. We chose to focus much of that report on measures to control illegal immigration, because growing frustration about it undermines our first commitment to legal immigration in the national interest.

Let me sum up the Commission's reasons for proposing that we develop a better system for worksite verification. Reducing the employment magnet is the linchpin of a comprehensive strategy to reduce illegal immigration. Illegal aliens are here for jobs. That is the attraction. So the only effective way to deter illegal immigration must include the worksite.

A better system for verifying work authorization is central to the effective enforcement of employer sanctions. The current system of verification is doubly flawed: it is too susceptible to fraud, particularly through the counterfeiting of documents; and it can lead to increased discrimination against foreign-looking and foreign-sounding authorized workers.

IRCA stipulates that all employers are required to verify all employees' identity and authorization to work. Employers are responsible for examining documentation establishing identity and employment eligibility and ensuring that the documents presented reasonably "appear" to be genuine and relate to the individual. This information is documented on the Employment Eligibility Verification Form [I–9 Form]. Under these verification provisions, employees can use a combination of more than twenty-nine different documents to prove identity and work eligibility.

The current process of employment verification has not functioned as the law intended to deter the hiring of undocumented aliens. The system may be thwarted easily by fraud. Widespread counterfeiting of documents that can be used for verification of identity and employment authorization has been reported since IRCA's implementation. Moreover, it is relatively easy to obtain genuine documents, such as birth certificates or drivers licenses, by fraudulent means. The ease of obtaining fraudulent employment eligibility documents has resulted in their increased use to satisfy I–9 requirements. The General Accounting Office [GAO] documented that 39 percent of unauthorized workers identified by INS investigators during a six-month period in 1987–1988 used proven or suspected counterfeit documentation to obtain employment. Other studies confirm similar levels of fraud. Because numerous documents—many of which may be unfamiliar to any given employer—may be shown to verify employment authorization, employers may have difficulty in determining if these documents meet the verification test, that is, that they "reasonably appear on their face to be genuine and to relate to the person presenting them."

Employer sanctions also have created problems for employees, who, if they are foreign-looking or foreign-sounding, may find themselves subject to unfair immigration-related employment practices. A number of government and private studies, including the Congressionally-mandated GAO study of discrimination have documented practices that put a greater burden on foreign-sounding and foreign-looking applicants for employment. These include employer demands that such employees provide additional or different documentation, or that employers selectively use Form I–9 for presumed aliens but not for U.S. citizens.

Although it remains a matter of controversy whether these practices represent widespread discrimination caused by IRCA, the evidence appears consistent that even some well-meaning employers are confused by the requirements under IRCA and, as a result, violate the terms of the law. While the completion of a Form I–9 is a good faith defense against allegations of knowing hire of illegal aliens, in some cases, employers may be found to have constructive knowledge of the illegal status of their worker if they do not follow up on anomalies uncovered in the I–9 process. If they press for additional documentation because they think they have reason to believe an employee is an unauthorized worker (for example, the document does not appear to be the same as the one reproduced in the INS Handbook) and their reasoning is faulty, they may violate the antidiscrimination provisions of IRCA.

In explaining their concerns about the current verification process, employers also cite what they consider to be excessive administrative and paperwork requirements. As a recent addition to tax records and other compliance and recordkeeping require-

ments, the I–9 is seen by employers as one more paperwork burden. Oftentimes employers photocopy all documents presented to satisfy the I–9 process as evidence to avoid a knowing hire challenge—a formidable increase to their paperwork volume. Further, the technical complexity of the requirement places significant demands on the employer in the form of compliance instructions, training of staff, and contact time with candidates for employment.

The sheer number of documents available for use in verification presents challenges for effective implementation of employer sanctions. Some efforts are underway to correct this situation. INS has proposed regulatory changes that would reduce the number of documents to be used for verifying work authorization for aliens. In addition, voter registration cards will be eliminated from the list as they generally do not contain a photograph needed to verify identity. The Commission believes that these efforts will not solve the problems inherent in the current verification process for several reasons. Reducing the long list of documents by a few documents would still leave too many documents for effective verification; it would also be unlikely to reassure employers sufficiently about the security of the system and may even add to employer confusion and lead to a potential increase in differential treatment. Counterfeiting or the fraudulent use of documents would still continue.

The Commission reviewed options that would reduce the number of acceptable documents even more stringently. The proposals that all aliens use an INS-issued document and all citizens present one of a limited number of documents, such as a passport, birth certificate, social security card, and/or driver's licenses, still contain a basic flaw: the employee would still have to self-identify as an alien or citizen. Such proposals would continue to permit considerable amounts of fraud if illegal aliens declare themselves to be citizens and present counterfeited documents. They also would potentially permit perpetuation or increase of current levels of differential treatment if employers question whether foreign-looking or -sounding citizens are citizens and require an INS-issued document.

Recognizing the problems inherent in strategies to reduce documentation but not to change the overall system of verification, the Commission set a number of criteria by which it measured the potential impacts of more comprehensive reform.

First, a new system would have to be potentially more reliable and less susceptible to unfair immigration-related employment practices than the present one. Any solution would have to take into account that most documents can now be counterfeited within a relatively short time and for a cost that would be recoverable from the sale of the counterfeit documents. Employers generally do not have sufficient expertise to recognize counterfeit documents and, therefore, require a simple, effective means of validating the information presented by new workers. Moreover, the new system would need to apply not only to aliens, but also to U.S. citizens; otherwise, problems of fraud could continue (illegal aliens could claim to be U.S. citizens) and/or unfair immigration-related employment practices may increase (employers could set different documentation standards for all foreign-looking and -sounding individuals).

Second, the new system would have to meet civil liberties and privacy standards. The new verification process should provide protection against use of the system for purposes other than those specified in law. The verification system should protect the privacy of the information to be used in verifying work authorization.

Third, the system would have to lessen the time, resources, and paperwork spent by employers in verifying work authorization. The Commission is persuaded that the current I–9 process requires excessive commitment of time and resources because of the complexity of the verification process. Any new system should be simple to use and require as little paperwork as possible for employers. It should also be simple in overall design, so that enforcement may focus on substantive violations and not become preoccupied with paperwork violations rather than knowing hire of unauthorized workers.

Fourth, the new system would have to be as cost-effective as possible. Given that illegal aliens represent at most a very small portion of the total U.S. labor force, the Commission does not think it appropriate to recommend strategies with costs out of proportion to the problem to be solved. To improve verification without undue costs is possible, we believe, if a new verification system builds to the extent possible on the existing responsibilities, capabilities, and data systems of federal agencies rather than if it were to create new mechanisms that would be used only for verification of immigration-related work authorization.

Fifth, more effective verification likely would require a companion initiative for improvements in the integrity of the underlying or "breeder documents" (such as birth certificates) used to establish identity in this country. Birth certificates are easily counterfeited or easily obtained through counterfeit means. Since counterfeiting operations have become multimillion dollar businesses, meaningful penalties

would be needed to deter the counterfeiting of documents. New enforcement measures, commensurate with the scale of these operations, are needed to identify and destroy the counterfeiting rings.

The Commission believes that the most promising option for secure, nondiscriminatory verification is a computerized registry using data provided by the Social Security Administration [SSA] and the Immigration and Naturalization Service [INS].

Having assessed dozens of options for verification of work authorization, the Commission believes that the proposed computerized registry best meets the criteria described above. As envisioned by the Commission, the computerized registry would be used to verify that a social security number is valid and has been issued to the individual who is being hired. This database would be created and updated from SSA and INS files, but not connected to either. From SSA would come a limited set of data: name; social security number; and several other identifiers, such as date of birth and mother's maiden name. From INS would come information about the immigration status of lawfully admitted immigrants, nonimmigrants, and other aliens permitted to remain temporarily or permanently in the United States. The INS data would also contain information about the duration of work authorization for aliens granted temporary employment permits.

The Commission believes the key to this process is the social security number. For decades, all workers have been required to provide employers with their social security number. The computerized registry would add only one step to this existing requirement: an employer check that the social security number is valid and has been issued to someone authorized to work in the United States.

Most citizens obtain a social security number before age eighteen, and the majority obtain it immediately after birth because it is required if a parent requests a tax exemption for a child. SSA has programs with all but four states to issue social security numbers at birth to U.S. citizens. According to SSA, among the forty-six states that participate in the Enumeration at Birth system, 85 percent of the parents of newborns elect to participate.

SSA has already taken steps to make it more difficult for unauthorized aliens to obtain social security numbers by requiring any individual over age eighteen who requests a social security number to have a face-to-face interview. SSA checks immigration status before issuing the social security card to anyone who did not receive a social security number as a child because they immigrated to this country. SSA also keeps information that designates whether the alien has full work authorization or is temporarily authorized to work with permission of INS. SSA will give social security numbers to individuals not authorized to work if needed to open up bank accounts or for other reasons not related to work, but the social security cards issued to these individuals clearly state that they are ineligible for employment.

Under the proposed verification system, the employer would not ask individuals if they are citizens or aliens. Instead, the individuals would be asked for a name and social security number. This information could then be verified with the computerized registry. The employer would be given a confirmation number if the information given by the employee matches the database information. This verification number would be kept by the employer and could be used as an affirmative defense if the employer is accused of knowingly hiring an illegal alien. If, for any reason, a match is not found within the system, the employer would receive acknowledgement that the verification process was carried out but that, as confirmation could not be made within the system, the employee should check with the local Social Security office to correct the problem. It would not be necessary—or possible for the inquiry to give to the employer information about the reason why a match was not effected.

Also under this approach, in situations where the worker has temporary authorization to work, the employer could be told the individual has work authorization but to reverify as of a particular date when the eligibility expires. By the time of reverification, the information would be updated to include the individual's current employment eligibility status. The computer registry could also verify that an alien granted authorization to work for a specific employer, for example, under certain nonimmigrant visas, did not obtain employment elsewhere. Some of the costs of the new system may be offset by savings if the computer system allows extension of work eligibility to be done through updating of the database rather than through issuance of a new INS employment authorization document [EAD].

The Commission believes a computerized registry based on the social security number is the most promising option for verification because it holds great potential for accomplishing the following:

Reduction in the potential for fraud. Using a computerized registry rather than only an identification card guards against counterfeiting of documents. It provides more reliable information about work authorization.

Reduction in the potential for discrimination based on national origin and citizenship status, as well as inappropriate demands for specific or additional documents, given that employers will not be required to ascertain whether a worker is a citizen or an immigrant and will have no reason to reject documents believed to be counterfeit. The only relevant question will be: "What is your social security number?"

Reduction in the time, resources, and paperwork spent by employers in complying with the Immigration Reform and Control Act of 1986 and corresponding redirection of enforcement activities from paperwork violations to knowing hire of unauthorized workers. Through use of this system, employer confusion will be greatly reduced as employers will not need to rely on faulty documents.

The Commission recommends that the President immediately initiate and evaluate pilot programs using the proposed computerized verification system in the five states with the highest levels of illegal immigration as well as several less affected states. We are pleased that the President's immigration initiative and fiscal year 1996 budget includes funding to begin the pilot programs.

A pilot program will: permit the testing of various approaches to using the proposed verification system; provide needed information about the advantages, disadvantages, and costs of the various approaches; develop and evaluate measures to protect civil rights and civil liberties; and ensure that any potential obstacles, such as the quality of the data used in the registry, are addressed prior to national implementation. Assuming the results are positive, Congress should pass the necessary statutory authorities to support more effective verification.

The Commission recommends that these projects be undertaken in the high impact states because that is where the bulk of the illegal alien problem is. We did not recommend that the pilots be undertaken throughout all of the five states immediately. Pilot projects should start small. At each step, we should have results to determine what to do next.

The pilot program should incorporate a number of features:

A means by which employers will access the verification system to validate the accuracy of information given by workers. We have received conflicting testimony about the best way to check the applicant's identity. We have heard proposals for a more secure social security card, a counterfeit-resistant driver's license, and a telephone verification system that does not rely on any document. Several different options could be tested simultaneously in different states. The pilot program presents an opportunity to determine the most cost-effective, fraud-resistant, and nondiscriminatory method available.

Counterfeit-Resistant driver's license or state-issued identification documents. An almost universal identification document is the driver's license or identity document issued by Departments of Motor Vehicles [DMVs]. These documents are obtained in most states with a birth certificate, social security number, driver's license from another state, or other documents. During the past few years, there has been significant progress in increasing the security of these documents, pointing to further improvements that could be made. In the issuance of drivers' licenses, states are typically using secure paper stock, lamination, and other security features with a four to five year cycle for license replacement. Several states are issuing licenses made of hard plastic with a magnetic stripe. Alteration of the card is difficult and an operation for mass producing of replicates would be very expensive. The use of a smart-card chip and a biometrics identifier on the license is currently being explored through the Department of Transportation. Digital imaging, a new technology currently used for Virginia drivers' licenses, allows for automated capture, display, and comparison of current and previously recorded signatures and photographs. Employers would not be required to assess the validity of the drivers' licenses, however. The computer registry would tell an employer if the name and social security number on a license are valid. In this way, even a very good counterfeit would not pass muster.

Social Security Cards. Existing social security cards cannot serve as effective identifiers of the holders of those cards. While currently issued cards are more resistant to counterfeiting than earlier versions, many easily counterfeited cards remain in circulation. There are forty-four versions (twenty-six original and eighteen replacement) of the social security card. As of June 1993, 63 percent of the total number of active card holders had been issued the new counterfeit-resistant card, still leaving a substantial number of valid older documents in use. (There is no way of knowing how many counterfeit cards are currently in use or how many illegal aliens may have obtained valid social security numbers through fraudulent means.)

Even the new cards have problems as identifiers; these cards do not have any identifying information other than the individual's name. A number of proposals have been put forth in Congress and elsewhere for the development and reissuance of a more counterfeit-resistant social security card. Even apart from the immigration-related reasons for a more secure social security card, arguments in favor of reissuance point to the need for greater integrity in the social security system itself. Critics of these proposals point out the cost and inconvenience to the public of a requirement for reissuance of the social security card. Further, if a photograph is used on the new issuance, it will be necessary for cards to be reissued periodically. SSA estimates the initial cost would be in the range of $2.5 billion. The pilot program would provide an opportunity to determine the cost-effectiveness of proposals to reissue the social security card.

Telephone Verification. Some experts testified that a stand-alone telephone verification system could work to verify identity if workers are asked for information that they alone know. Many credit card and bank companies use a Personal Identification Number [PIN] to verify identity. Under this proposal, employers would enter individuals' social security numbers and workers would enter a PIN which only they knew. Alternatively or in conjunction with the PIN, employees could provide a set of identifying information: for example, name, social security number, mother's maiden name, and date of birth. The pilot would test whether a telephone verification process that requires no documentation affords sufficient protections against fraud and discrimination.

Experts note that under any of these systems, the computer system could have a built-in process for logging and auditing inquiries to identify likely fraud. For example, if the same social security number was used too often or in too many locations, the computer system would record the incidence. The system then could inform the employer that the employee must reconfirm the information in the database. The authorized worker would benefit from learning that others were using his or her social security number. The social security number might then be canceled and the authorized worker issued a new number. The unauthorized worker could not reconfirm the information and, therefore, would not be able to continue in that employment. The process would also permit estimates of likely fraud to use in determining the efficacy of the verification system.

Measures to ensure the accuracy of and access to the specific data needed to ensure that employers have timely and reliable information when seeking verification of work authorization. Improvements to the Social Security and INS databases must be made to ensure that these data are available. Both the INS and SSA are already improving their data systems.

Both houses of Congress have already earmarked funds in the INS fiscal year 1995 appropriation to enable the agency to undertake such needed reforms. INS is currently completing the process of combining several databases into one integrated system. Nonimmigrant and refugee data are now integrated into the Alien Status Verification Index [ASVI] database, that is used in the benefits verification process, the System for Alien Verification of Eligibility [SAVE], and the Telephone Verification System [TVS] pilot for employment eligibility verification. In fiscal year 1995, the INS information systems division will almost double its budget, from $110 million to $200 million, to improve the infrastructure of the data systems.

The Commission welcomes these steps and encourages INS and SSA to take seriously their responsibility to have accurate, accessible data fully protective of privacy. Even with these improvements in the source data for the computerized registry, procedures must be developed to ensure timely and accurate extraction as well as updating and correcting the needed data. The Commission encourages INS and SSA to cooperate in this endeavor as the proposed registry would be built upon and—once implemented—would support the primary missions of both those agencies. Each agency has a vested interest in ensuring that its data are accurate, even apart from their common interest in ensuring that unauthorized workers do not obtain jobs. It is unacceptable that neither agency's records can currently provide needed information quickly. Resources requested and used for employment and benefit authorization purposes can largely be seen as enhancing or parallel to the resource needs of the larger mission of these agencies.

Measures to ensure against discrimination and disparate treatment of foreign-looking or -sounding persons. The Commission believes that the least discriminatory system would have the same requirements for citizens and aliens alike.

To reduce the potential for discrimination and increase the security of the system, the Commission also believes that employers should not be required to ascertain immigration status in the process of verifying authorization for employment. Their only requirement should be to check the social security number presented by the employee against the registry and record an authorization number to demonstrate that they have done so.

Measures to protect civil liberties. It is essential that explicit protections be devised against use of the database and any card or any other means used to gain access to it—for purposes other than those specified in law. The uses to be made of the verification system must be clearly specified. We believe the worksite verification system could be used, without damage to civil liberties, for verifying eligibility to receive public benefits. However, it should be stipulated that no one should be required to carry a card, if one is used, or to present it for routine identification purposes. There also should be penalties for inappropriate use of the verification process. Putting these provisions in law, rather than regulation, would make it more difficult to later change them in a manner that would evade protection of civil liberties.

Measures to protect the privacy of the information included in the database. The Commission is aware of the proliferation of databases and the potential for the invasion of privacy by both government and private agencies. The computer registry recommended by the Commission will be drawn from an existing national database, the Social Security computer system. Given the scope of the registry, it is essential to build in explicit provisions for protecting privacy. As with other aspects of our recommendations related to civil liberties, these safeguards should be made by law not just regulation. The resultant computer system should incorporate appropriate technical safeguards regarding authorized users' access to individual information. In establishing privacy safeguards, it is important to take into account that, while access to any one piece of information may not be intrusive, in combination with other information such access may violate privacy. In particular, safeguards must ensure that information about specific individuals other than the limited information to be provided as a part of the verification process itself—cannot be obtained from the database. To create a viable system, institutions and individuals with expertise in privacy matters should be involved in the development and assessment of the pilots. For example, the Computer System Security and Privacy Advisory Board created by the Computer Security Act of 1987 to identify and advise on security and privacy safeguard issues relating to federal computer systems should be involved in this process.

Estimates of the start-up time and financial and other costs of developing, implementing, and maintaining a national system in such a manner that verification is reliable. The establishment of the proposed computer registry is the top priority during the pilot process and the key to the effectiveness of the process. While the record structure is simple, ensuring the quality of the source data is essential. Updating the information in a timely way is another basic, but very important, requirement. The database would contain only a half-dozen data elements (name, social security number, date of birth, place of birth, mother's maiden name, immigration status code, for example), and therefore would be quite straightforward from a programming viewpoint. However, ensuring that these elements are complete and correct for all records will require significant start-up costs in making the necessary improvements to existing databases, particularly for INS.

Informal estimates by the Social Security Administration indicate that the cost of design and development of the combined SSA/INS database is $4 million over a two year period. Annual cost of maintaining and operating the verification system is estimated at about $32 million. This figure maintains the computer registry itself, the costs of operating the automated system for checking social security numbers against it, operator costs for calls that cannot be handled automatically, and telephone lines for an 800 number to be used by employers.

Correcting errors in the INS and SSA databases will require the largest financial input. Discrepancies referred to SSA for resolution will cost approximately $122 million initially with an annual cost of $30 million. The cost of resolving discrepancies in the INS database will be additional. INS is already taking steps to improve its recordkeeping, but under the current plan, these improvements will take several years to accomplish. Additional appropriations will be needed to speed that process and ensure that accurate information will be available in a timely manner. Correcting discrepancies in the existing SSA and

INS databases would be good investments, even if the computer registry were not at issue.

Specification of the rights, responsibilities, and impact on individual workers and employers. The pilot program will need to determine a number of important issues related to the rights, responsibilities, and impact upon the users of the verification system. These include, for example, what individuals must do; how long it will take for newly authorized workers to get on the system and to correct inaccurate data; and what will be required of employers and at what expense.

Provisions must also be developed to protect both workers from denial of employment and employers from penalties in cases where the information provided by the computer registry may be missing or inaccurate.

Even with major improvements in the reliability of the data, the pilot programs will require mechanisms for timely manual secondary verification and an appeal when there is no match. Experience with existing databases, such as SAVE, indicate a sufficiently high error rate to merit further review. If the error rate is too high, the result may be discrimination against employees who come up as false negatives. To deter such discrimination, employers could be required to retain in employment those individuals until the employment authorization is confirmed (as in the current law, verification is a post-hire process). The current pilot project on telephone verification [TVS] has this provision.

A plan for phasing in of the system. The Commission recognizes that the proposed verification system will result in financial costs. The system should be phased in to lessen the immediate fiscal impact. The pilot programs should test various phase-in procedures. Given the required levels of accuracy, reliability, and convenience required, the evaluation should help measure the cost of phasing in the system nationally.

The Commission recommends evaluation of the pilot programs to assess the effectiveness of the verification system.

The evaluation should include objective measures and procedures to determine whether current problems related to fraud, discrimination, and excessive paperwork requirements for employers are effectively overcome without imposing undue costs on the government, employers, or employees. The evaluation should pay particular attention to the effectiveness of the measures used to protect civil liberties and privacy. In carrying out the various components of the evaluation, study designs should be capable not only of identifying the degree to which the pilot alternatives achieve defined goals, but also of identifying why certain outcomes have occurred. In particular, the evaluation should assess the extent to which any identified strengths and weaknesses in the pilot programs are attributable to the computerized registry itself and/or the mechanisms used to access it. This information is essential to determining if the computerized registry should be maintained as a cost-effective mechanism for verification and, if so, what means of access should be used nationally.

The Commission supports INS efforts to improve its Telephone Verification System/SAVE [TVS/SAVE] database but only as an interim measure.

The improvements are essential for improving the data needed for the new, more effective verification process. The Commission is aware of the inadequacies of the current INS data that would be used in the proposed system. The Commission does not endorse the TVS/SAVE program as a long-term solution to the verification problem because use of TVS/SAVE requires the inadequate mechanism of self-attestation by workers as to their citizenship or alienage, thus making it easy for aliens to fraudulently claim U.S. citizenship. It also imposes requirements on legal immigrants that do not apply to citizens. Nevertheless, improvements in this database as well as the Social Security Administration database are essential to the development of a more secure, less potentially discriminatory verification system.

The current Telephone Verification System builds on the ASVI database that was established for the SAVE program. SAVE was designed for verification of legal status as it pertains to eligibility for federal assistance programs.

The following information is contained in the ASVI database: alien identification number; verification number; last name; first name; and an employment eligibility statement. The time-consuming aspect of the ASVI database is that often the system, for any number of reasons (e.g., files are not updated, there is a systems error, or the number provided is not functioning) cannot provide a response to A-number queries. When this happens the system refers the case for secondary verification. In fiscal year 1994, (September–July) there was a 17 percent secondary referral rate for the SAVE system. A study of Phase I of the TVS pilot reported a 28 percent secondary referral rate. INS is already in the process of improving its system and is working to upgrade the ASVI database and reduce the need for secondary ver-

ifications. The Commission endorses INS initiatives to improve the SAVE/ASVI system as this step is necessary before a more secure system can be achieved.

Those are the Commission's recommendations on verification of work authorization. They are part of a comprehensive approach to immigration reform which this Commission proposes. I will be glad to answer any questions.

Mr. SMITH. OK. Thank you, Professor Jordan. And, as always, we appreciate your candor and your, in this case, very detailed recommendations, which is just what we were looking for.

You mentioned in regard to the verification system the three possibilities: the telephone verification system, the tamper-proof driver's license, and then the tamper-proof or resistant Social Security card.

Ms. JORDAN. Yes.

Mr. SMITH. Were those going to be used jointly or was it one approach or the other that you preferred?

Ms. JORDAN. We would believe that it is going to be discovered that the computerized system with Social Security number is the one that is going to be the most promising identifier, but these various options are to be tested to see whether they would provide an even more reliable or expeditious identifier. And Dr. Martin could comment further on that, if you would permit that, sir.

Mr. SMITH. Sure. Absolutely. Dr. Martin.

Ms. MARTIN. Thank you.

The concept of the Commission was that there would be a range of pilot tests within this overall framework of the computerized verification, and in some locations among some employers there would be a testing of the telephone verification, which would use some personal identifiers such as mother's maiden name and date of birth, along with software within the computer system itself that would flag likely irregular patterns of usage. If the same information is used in a number of different places at the same time, it would flag that. Other places might use the driver's license and still others the Social Security——

Mr. SMITH If we went to the tamper-resistant Social Security card that's one of your recommendations, it seems to me that we're really only asking for one or two bits of information more than is now required to get a Social Security card; is that right?

Ms. MARTIN. But the reason that the Commission suggested pilot testing issuance of a new Social Security card was that we didn't have a really good sense of what would be the financial cost as well as the burden on U.S. citizens for going in and getting a new card. Presumably, if it has a picture on it, there would have to be a face-to-face interview. We thought that pilot testing of it would allow us to have that better sense of what the cost would be.

Mr. SMITH. I understand.

Professor Jordan, one of the problems with coming up with a tamper-proof or tamper-resistant Social Security card is the problem of fraudulent breeder documents, the birth certificates, and so forth, that are used to obtain the Social Security card to begin with. What should we do—what legislation would you recommend as far as addressing the problem of the fraudulent breeder documents?

Ms. JORDAN. We have thought about that, Mr. Chairman, and I would like for Dr. Martin to give you the benefit of what we have in mind at this point.

Ms. MARTIN. The Commission has a series of recommendations to reduce fraud with breeder documents. One of the mainstays of those recommendations is more effective matching of birth and death records because this system really doesn't come to full circle unless you can ensure that you know when someone dies and that their records cannot be appropriated by someone else.

With regard to birth certificates, we were recommending that they be—that for all purposes required by Federal law, that they'd have to be issued on specific paper stock with a certification from an issuing agency, so that one couldn't just go to a library, as is possible in many communities, and get a xeroxed copy of a birth certificate and then use it.

Mr. SMITH. Thank you.

Professor Jordan, my last question is: how would you respond to charges that if you had this national registry, that it would inevitably lead to an invasion of privacy or abuse, and the information would be used for purposes for which it was not intended? And that's really the heart of it because that's the objection that we hear.

Ms. JORDAN. I know that it's the objection you hear, Mr. Chairman, and I hear it also probably as much as you do. What we have recommended here in having the—testing out the programs, we as a Commission will monitor these pilots very closely and very carefully. And what are we looking for? We are looking for the opportunity, or lack thereof, to discriminate, notwithstanding we've got a new verification system.

We know that civil liberties and civil rights violations are unacceptable. We know that we must try to guarantee some kind of an assurance that we are not putting in place a system that is going to be violative of our traditions of privacy and civil rights. And in monitoring closely, there will be an opportunity to see whether such violations do, in fact, seem likely or whether they do occur. Also, protections should be built into the law which would protect the privacy of the information gathered in this, in the data system.

Mr. SMITH. Thank you.

My colleague from Texas, Mr. Bryant, is recognized.

Mr. BRYANT of Texas. Professor Jordan, I'm afraid to say I'm somewhat computer-illiterate, and I'm wondering about the technical feasibility of this much data, about this many people, on the computer system that is, I suppose, on full-time alert; that is, accessible at any time of the day or night by the employer. Can that actually be done?

Ms. JORDAN. Congressman, we are told that it can actually be done, and we have been told that by people who are alleged to know what they are talking about.

[Laughter.]

Ms. JORDAN. And Dr. Martin can fill in what I have just said because she recognizes that—we understand the question that you just posed quite well.

Ms. MARTIN. Yes. One of the first things we did as we began to move into thinking about this type of system was contact the banks that run the Mastercard and Visa systems and American Express systems, and found out that their data banks cover many, many more transactions per day than is ever likely to arise under a hir-

ing situation, and, actually, have a much more complex computer system because not only do they check that the credit card is a real one that has been issued to that individual and the number matches, but they have to go through a whole credit history to determine if the purchase amount complies with their credit limits. And so their—and, apparently, it only costs pennies per transaction for that type of credit card check.

We thought that, given that the technology has progressed to the point where we are willing to rely on that type of technology for financial transactions, that it was certainly an appropriate step to go in testing it for this type of transaction.

Mr. BRYANT of Texas. Yes, that's a very good—that's interesting. I had not thought about the similarity between this and credit cards.

What about the cost of it? Professor Jordan mentioned it briefly, but you're talking about an awfully big system.

Ms. JORDAN. Right. So continue with that.

Ms. MARTIN. Right. We had asked the Social Security Administration to give us some preliminary sense of what the cost might be, and their cost figure had two sections to it. One was what would need to be done to ensure that the data is verifiable in correcting the problems of the data base, and the second part was the ongoing transactions of checking verification.

The biggest cost is in making the data acceptable for this use. In their own systems, it would be several hundred million dollars to start with, about $200 million over a 5-year period. INS will have comparable, if not larger, costs which they're already engaged in to improve their own data bases.

The ongoing cost of checking it, once the data systems are in place, were in the $30 million per year to $50 million range. That corresponded to what we heard from the credit card companies would be the likely cost when we explained to them what was anticipated. So we think on the ongoing basis that that's probably a pretty good estimate. But, again, the pilot programs will give us a better sense of what the national costs would be.

Mr. BRYANT of Texas. Now how do you envision the pilot programs beginning? I mean, how can they function if you don't have the entire United States on the program already, since employees, potential employees, can come from anywhere? How do you start?

Ms. MARTIN. If I can continue——

Ms. JORDAN. Go ahead, please.

Ms. MARTIN. In our discussions with INS and Social Security, the proposal that seems to make sense to begin with is a system which doesn't rely initially on the linking or matching of the SSA and INS data bases, but what they're referring to is a two-step process. We would hope that there would be one point of contact for doing this, but the employer would go into a single point of contact with a Social Security number, perhaps to the contractor for Social Security and INS, which would then check the Social Security data base to check on the Social Security number. If there was any problem within that data base, it would then go to the INS data base. This would give an opportunity to begin the process of improving the verification while the steps are put in place to actually have a single computer registry that would do it in one step. We think that

this makes sense as a way to get going immediately and not have to wait for 3 or 4 or 5 years for all the glitches and a joint computer to be worked out.

Mr. BRYANT of Texas. What makes that a pilot program as opposed to just a national program? What's limited about it to make it pilot?

Ms. MARTIN. The value of a pilot program is that if you start it relatively small, then if there are a lot of secondary verifications that are required, it doesn't break down the system because it's a small enough number that it can be handled through a second manual check of the records, if that's necessary, and that can be done in a relatively—a short enough time period so that the employer and the employee aren't held at risk.

If we went to 50 million new hires being checked through a system that's not yet proven, the chances are that it would fall under its own weight, that it just couldn't sustain the secondary verifications that would be necessary. So we'd rather it start small. As the data base is improved and we reduce the number of secondary verifications that are required, then it can get larger and larger until in a few years we should be able to go nationally, if it works.

Mr. BRYANT of Texas. But the thing that's getting larger is the number of people permitted to access the system; right?

Ms. MARTIN. Right. Yes. So you'd start with a number of employees—number of businesses and then expand to perhaps a geographic area, all businesses within a small geographic area.

Mr. BRYANT of Texas. Well, isn't—I'm running over my time here, but is the data they're going to access—is it already there and ready?

Ms. MARTIN. Yes. Yes, but it's not—what's not yet ready is an ability to match the Social Security and the INS data bases so that you can access everybody just with a Social Security number. The gap right now is that INS doesn't have Social Security numbers; they have "A" numbers, and so you'd need a two-step process having both sets of information.

What we would like to see is eventually the Social Security number be the only thing that an employee has to give, so that the employer doesn't even know whether someone is a citizen or an alien. They only know that this person has a valid Social Security number. We think that will reduce discrimination if alienage is irrelevant to the hiring process as far as the employer is concerned.

Mr. BRYANT of Texas. Thank you.

Mr. SMITH. The gentleman from California, Mr. Berman.

Mr. BERMAN. Thank you, Mr. Chairman.

I want to follow up on this question to understand better this notion of pilot projects. You suggest one of the tested pilots be a Social Security verification system.

Ms. MARTIN. Right.

Mr. BERMAN. You don't even start out on a geographic pilot; you start out on a pilot within the geographic area of just certain employers; is that what you're suggesting? You're not suggesting the initial pilot be every employer in a particular area?

Ms. MARTIN. Right, because that would be too large initially to be supported by the state of the data.

Mr. BERMAN. So you pick certain employers in a particular area, and their obligation—by the way, is it a voluntary situation? Do certain employers volunteer to participate in this program or do you envision having the authority to compel them to participate?

Ms. MARTIN. That's something that the Commission hasn't made specific recommendations on. I believe in the TVS Program that's currently operated it's voluntary, but I think that where there are employers who have repeatedly had problems with the employer sanctions, that there certainly could be a bargaining in terms of the—if they're up for paperwork violations, that participation in the pilots would be seen as a good-faith effort to correct their problems.

Mr. BERMAN. OK. And then an applicant—is this a system to be applied to all applicants for employment or——

Ms. MARTIN. No.

Mr. BERMAN [continuing]. People only once a hiring decision has been made?

Ms. MARTIN. Only once the hiring decision is made, as in the current——

Mr. BERMAN. All right. And if they say or present a Social Security card with a number——

Ms. MARTIN. In that——

Mr. BERMAN [continuing]. Tell me what happens then.

Ms. MARTIN. Let me step back a second because if the pilot program is for pilot testing the issuance of a new Social Security card, then that would have to operate differently as a first step because that would most likely be a geographic area because of just the feasibility——

Mr. BERMAN. Well, all right, then, let's just go back to that question. Is your pilot program for the reissuance of a new tamper-proof Social Security card or is it to test a Social Security verification system under the existing card?

Ms. MARTIN. The basis for our understanding—for our proposal in terms of pilot testing is that it is fundamentally a test of use of the Social Security number, not the existing card.

Mr. BERMAN. All right. So then—well——

Ms. MARTIN. We would say that one way of——

Mr. BERMAN. But it wouldn't, then, require that there be a new tamper-proof card developed and implemented in order to start the pilot?

Ms. MARTIN. No, the other two pilots are not dependent on it at all, the telephone pilot or a driver's license verification.

Mr. BERMAN. But driver's license verification isn't Social Security number-based, is it?

Ms. MARTIN. Well, many States now use the Social Security number as their number for the driver's license.

Mr. BERMAN. OK. Well, then, is there—in the testimony, "a means by which employers will access the verification system to validate the accuracy of information given by workers. One of the proposals is Social Security cards." Is that test a test of a tamper-proof Social Security card?

Ms. MARTIN. Yes.

Ms. JORDAN. Yes.

Mr. BERMAN. Well, then, how do you do—given that now it's not your universe of employers, it is the universe of employees that becomes critical, how do you implement that kind of a pilot?

Ms. MARTIN. Right. Our assumption on that one was that if there is a decision to test that particular approach, then the reissuance of a Social Security number would be done on a geographic basis within a particular area.

Mr. BERMAN. And even that would have some limits because an individual either can come from outside of the geographic area or it can say he or she comes outside the geographic area.

Ms. MARTIN. Yes.

Mr. BERMAN. Well, let me make sure. Are you suggesting there be a pilot of a tamper-proof Social Security card? Are you recommending that?

Ms. MARTIN. It's one of the three options that we think should be considered for the pilot programs, but the Commission is presenting these three options as possible options for the pilot programs. They're not trying to micromanage exactly what the pilot——

Mr. BERMAN. Right. Then let's turn to the telephone verification system. Certain employers are required to participate. The applicant gives the number. The employer makes a hiring decision and calls to verify that, in fact it's a valid number. Have you really verified something if you've established that that's the case? I mean, there's two things you're trying to verify here. One is that the person who is applying, in fact, has a Social Security card with that number, and, secondly, that that person is here legally. If that person says, "I'm a U.S. citizen," then, by definition, none of the data in the INS——

Ms. MARTIN. Right.

Mr. BERMAN [continuing]. Unless I guess it's naturalization data, none of the data in INS covers people born in the United States, right?

Ms. MARTIN. Right.

Mr. BERMAN. So Mr. Smith, the chairman, in his initial comments, raised this issue. I mean here's where you have a potential problem on discrimination and the problem of verification may come together. If you claim to be a citizen, the telephone verification system cannot effectively verify that you are, in fact, a citizen?

Ms. MARTIN. But the telephone verification can effectively verify that a citizen has a valid Social Security number that has been issued, that has no restrictions on its use, and all citizens would have that. That's exactly the reason for having the verification based on a Social Security number, is it's something that citizens and aliens alike have to have in order to work.

Mr. BERMAN. But an alien has to have one more piece of information, and that is that the INS confirms that, in fact, he is a legal alien, and, therefore, in a way, the employer somehow in accessing the system has to be determining from the employee whether he's a citizen or a legal immigrant, which may even be a prohibited kind of question under the Frank amendment to the 1986 law.

Ms. MARTIN. Well, what we would like to see eventually in the system is an invisible process as far as the employer is concerned because of an ability to match a Social Security number and an "A"

number. So that the computer registry system—we acknowledge that we're not there yet. So perhaps the I–9 would for an interim period need to be continued, which would have the "A" number on it of someone who claims to be——

Mr. BERMAN. My time has expired. I don't know if we'll have more time, but——

Mr. SMITH We'll come back if you want it.

The gentleman from California, Mr. Bono.

Mr. BONO. Yes. I just got here. So please forgive me.

Once we get a system like this in place, will that take the heat off the employer? In other words, if an employer gets a verification on the phone or if there is a legitimate card that the person seeking work is carrying, will then that take the burden off the employer to be responsible for whether that person is here legally or illegally? The way the current system is now, in California you get reams of paperwork that if you don't fill out properly—and that you don't have a clue how to fill out, but if you don't fill it out properly, you're penalized. And then if the person gives you what's required—now a Social Security, and whatever—and you hire that person, you're penalized again substantially financially. And if it's a couple of times, you're in dire straits.

Would this take that burden away from the employer so that if it is, in fact, verified by whatever pilot program you use, will the employer be off the hook?

Ms. JORDAN. Congressman, if that employer's burden is not lessened as an outcome of this verification system, it's a total failure.

Mr. BONO. Right. That's correct.

The other—I didn't quite understand trying to ascertain whether someone's here legally or if he's a citizen or not. I don't think it makes any difference. If they're here as a legal alien, they don't have to be a citizen; they just have to be here legally; is that correct?

Ms. JORDAN. Yes.

Mr. BONO. Yes. Well, that's great. I think that's terrific, however you come up with it, and it's desperately needed for small business because if they do inadvertently make a mistake, they're penalized as well, and it's severe for a small business. So I think it's wonderful.

Thank you.

Ms. JORDAN. Thank you.

Mr. SMITH. I'm surrounded by gentlemen from California. Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman.

Again, thank you, Professor Jordan and Dr. Martin, for being here.

Let me follow up on a statement, Professor, that you made in your testimony that we should have the protections built into the law to avoid discrimination. Let me run by you a few things and tell me your thoughts on these.

Our data bases, there is clear evidence that we need to clean them up and we need to make sure that they're accurate, so that we can have some type of verification system that relies on strong data.

Ms. JORDAN. Correct.

Mr. BECERRA. We know from previous experience with employer sanctions that if you don't provide the resources and a commitment on the part of the executive and legislative branches to support that particular policy of employer sanctions, that it will never work because employers can't be expected to do it on their own without the resources and the assistance and education on the part of the Federal Government.

If TVS falls under this same situation that we've seen with employer sanctions, where there has been a lack of resources, and I think a lack of commitment on the part of the Federal Government to assist employers, would you—what would be your opinion on the success of TVS?

Ms. JORDAN. Congressman, the system would not be successful without a commitment of resources and will on the part of the authorizing, policymaking bodies up here. We understand that it is one thing to pay lipservice support to an initiative and another to show a serious intent to see that initiative do what it is supposed to do. So TVS will require the resources.

The good news is all indications presently are that there is this willingness, there is that commitment, and there is the desire to see the system work because of the recognition of how large the problem is.

Mr. BECERRA. In regards to instances of discrimination or the advent of discrimination, would it be your opinion that we would need to have some checks in place, audits in place, that would help us diminish the chance of discrimination or, hopefully, eliminate the chance of discrimination for those job applicants who come into the system, this TVS system, in the first place?

Ms. JORDAN. Yes. The purpose of the pilot would be let us, the Commission, monitor the pilots with care. And what will we be looking for? We will be looking for the opportunity that could be exploited to discriminate, and notwithstanding our efforts to create a new system.

If whatever is tested proves to provide additional opportunities to discriminate against either foreign-looking or foreign-sounding people, then there is something amiss in that system, and it's not something you would want to become national policy.

Mr. BECERRA. Professor, would you say that in the process of trying to provide these audits, this monitoring of the TVS and its protection or trying to avoid the discrimination, that we should have ongoing audits; for example, something like an undercover operation where we ensure that we have someone as an employer who is not trying to at the initial stages discriminate because it makes it easier for him or her as an employer to be able to hire only those who are eligible to work?

Ms. JORDAN. That could be the necessary thing to do. That is why a pilot being closely monitored is so important, and we would then know where there is a need for an ongoing look and assessment and check.

Mr. BECERRA. Well, let me see if I can get a more precise answer from you. My concern is you have a pilot program, and if you assess it only after the fact, if you just assess what has happened, you're never going to know from those who may have been discriminated, who never got a process into this checking, this audit-

ing system, whether or not there was discrimination, and I would think that what we would want to pursue is a policy that ensures that as the pilot program is underway——

Ms. JORDAN. Proceeds.

Mr. BECERRA [continuing]. We're checking it.

Ms. JORDAN. I'm sure—Susan.

Ms. MARTIN. Yes, the Commission recommends that the evaluation process begin on day one, that it not be an after-the-fact evaluation, but a process evaluation that is able to do exactly that type of ongoing monitoring. And, also, in other recommendations the Commission has made on this issue, we also do recommend that the Office of Special Counsel take a more proactive role in identifying discrimination, not just responding to complaints, and suggest exploring the concept of testing as a way of seeing whether that proactive role can be developed better.

Mr. BECERRA. And, Dr. Martin—I know my time has expired, Mr. Chairman, but let me, if I may, just ask this last question.

Dr. Martin, doesn't that mean that we need to have some type of system as we monitor that allows us to check as we go along, which probably requires some type of undercover operation, random operation, where we check these employers that are participating in the program to ensure that as they are receiving applicants for jobs, that they are not doing anything close to discriminating in order to avoid the hassle that they might have as employers in hiring only those who are authorized to work?

Ms. MARTIN. Yes, there is a fairly well-developed procedure for doing exactly that type of testing, which certainly should be a part of any type of evaluation, so that we're not just taking what the employers say, but having some independent means of measuring the compliance.

Mr. BECERRA. Thank you very much. Thank you, Mr. Chairman.

Mr. SMITH. Mr. Berman is recognized for a followup question.

Mr. BERMAN. Thank you. Thank you, Mr. Chairman.

I think this subject matter is the most important subject matter we're going to deal with in this whole effort to deal with immigration and so, again, I congratulate you for having this hearing. If you can put together a consensus that deals with the meaningful verification and the problems of discrimination and privacy, you'll deserve something more than you'll ever get.

Ms. JORDAN. Thank you.

[Laughter.]

Ms. JORDAN. Thank you, Mr. Berman. Only with your help, we'll do it. Thank you for the compliment.

Mr. BERMAN. You have one problem: it's also the most boring subject to try and deal with.

[Laughter.]

Mr. BERMAN. So it's sometimes hard to focus on.

On the discrimination issue, I mean the fact is one of the conceptual attractions of an effective identifier system, if that's what you want to call it, is that it may be the answer to the problem of discrimination because and I think Professor Jordan pointed this out when she first announced the Commission's recommendation in this—some part of an employer's motivation to discriminate may be to avoid the penalties for sanctions, and some employers will make

decisions based on accents or appearance or surnames or things like this. Once you have in place, if it is possible—and I'm a little skeptical, an effective system, then they go through a routine, they do it for everyone, and that ends that aspect of the discrimination.

Discrimination is one issue. Privacy is really a separate issue. In the context of these pilot programs, what are the kinds of walls that we should enact to make sure that people's privacy rights aren't violated, and that this doesn't become the kind of national ID card that really creates all kinds of fears in people's mind, that you have to show it at any given moment; that the grocer can ask for it when you're going to cash the check or just to be served in a particular facility, walking down the street? And, should we allow the executive branch to create those walls or should we be involved in writing the provisions for those walls?

And, then, I'd just only point out one thing. The one wall that I know that seemed to have worked was the wall we created within INS during the legalization program, because we were very fearful of INS people coming in, applying for legalization, INS enforces and deports people. Will the legalization wing give to the enforcement and deportation wing the names of people who didn't qualify for legalization, who by coming forth were admitting they were here illegally, in effect? And I'm unaware of one even anecdotal piece of evidence that that wall was breached, but, anyway, go ahead.

Ms. JORDAN. Congressman, certainly, we want to hear what we're doing on it, but it's going to be up to the drafters of the legislation to put in there penalties for an unauthorized access to this data system and unauthorized use of the data which is collected.

Now, Susan, do you want to add to that?

Ms. MARTIN. Yes, but the Commission certainly believes that these privacy walls, as you've framed it, should be in the legislation, and with reference to as much specifics as is appropriate for legislative—for statutory provisions.

We think that there are some very basic things aside from the penalties that can be applied against those who misuse it. It should be a very, very clear statement that the verification process can only be used under these very specific circumstances, and for those to be spelled out in the law; that the Commission thinks, in addition to being used for the employment verification, it would be appropriate to use it for verification of benefits where alienage is an issue in terms of the receipt of Federal benefits; that that's an appropriate peripheral use of the system. But, beyond that, we really couldn't come up with anything else that would be appropriate; that that we would leave to Congress to explore the possibilities.

A second thing, as I said, would be penalties for misuse and the process within the computer registry to identify that type of misuse, so that it would be pretty obvious.

A third thing, in terms of protection of privacy, is ensuring that the computer registry itself has very little data that is of use to anyone other than for verifying work authorization. And, by that, it means that there has to be a wall between this registry and all of the other data in Social Security and all of the other data in INS. It really should have nothing other than the identifier itself and the work authorization issue, but there has to be a process established to ensure that it can't be a back door into getting any

type of Social Security earnings. I would think that that would be a primary interest of this committee, ensuring that that doesn't happen.

Ms. JORDAN. Congressman Berman, in drafting such legislation, each Member should be very careful that legislative intent is not left to guesswork, but that it's obvious from the letter of the law what was intended.

Mr. SMITH. Mr. Becerra is recognized for additional questions.

Mr. BECERRA. Thank you, Mr. Chairman.

Let me continue in this vein on the questions of civil liberties and discrimination.

If and when we see an instance of discrimination and we find that someone has been aggrieved, I hope it's not enough that we say that we've discovered that there is discrimination and we're going to try to remedy that situation in that workplace, but that we will also keep in mind that someone has probably lost a chance for livelihood.

Would you have any thoughts on what rights or remedies an aggrieved individual should have if, in fact, discrimination does occur as a result of a sanction policy by this Government under TVS?

Ms. JORDAN. The—it should be clear that a violation has occurred, and one thing which could happen is that the employer or that practice could be enjoined in a proper forum. Now I know what you're thinking about, the loss of livelihood, and then should there be some material award that could be had by the person who has been aggrieved, and that is a judgment, Congressman, that you're going to have to make as you think about the statute because we can't just do it in the abstract. It has to be something realistic.

Mr. BECERRA. But let me turn—you are a very respected Member, former Member, of this body and you are, I think, gaining an esteem beyond that as the Chair of this Commission. And let me ask you for your thoughts on what you think a remedy should be. And I don't limit it to just a monetary award of some sort, if there has been discrimination against an individual who has been deprived of employment, but perhaps an injunction, but that is a fairly intrusive remedy when you tell an employer: stop what you've done. You may have even hired someone unlawfully, and, therefore, we want to reverse, take an affirmative step of reversing, through an injunctive action, reverse what you've done and hire this person that you did not hire originally. That's very intrusive.

But I'm wondering, what will we do if we go forward with this type of policy where we do run the risk of discrimination? Please give us your own thoughts, your wisdom, on what would be the best way to remedy any discrimination for the aggrieved individual.

Ms. JORDAN. Congressman Becerra, I can think—I could think about this and perhaps come up with the kinds of responses that we should give to these acts of discrimination, but I would think that it would not be good to just kind of freelance think about what could be done. If you want—if you would like for me to give some serious consideration of what kind of penalty or what do we do once we have discovered this discrimination, I certainly will do that.

Mr. BECERRA. I very much would appreciate it because I think that everyone would agree that this Commission and its staff has developed a great expertise in this area, and perhaps no one would be more qualified to come up with some answers than the Commission. So rather than have it left to the whims of those in Congress and perhaps face the winds of political fiat, I would rather have a body that has taken some very judicious time in coming up with recommendations to consider this as well.

Ms. JORDAN. Congressman, we certainly will let you have some suggested responses to that question for your consideration.

Mr. BECERRA. Thank you.

Ms. JORDAN. Certainly, we'll do that.

Mr. BECERRA. I appreciate it very much.

[The information follows:]

COMMISSION ON IMMIGRATION REFORM,
Washington, DC, July 18, 1995.

HON. XAVIER BECERRA, M.C.,
Subcommittee on Immigration and Claims,
Committee on the Judiciary,
U.S. House of Representatives,
Washington, DC.

DEAR MR. BECERRA: In the subcommittee's March 30th hearing, you asked about remedies that should be imposed when an employer discriminates against a worker who may look or sound foreign, particularly in cases where faulty information from the work authorization verification process prompts the firing, or non-hiring, of a worker.

Let me start by saying that the best remedy is the prevention of discrimination. The Commission strongly recommends improvements in the verification of employment authorization because of the serious potential for discrimination under current law. Most discrimination appears to emanate from employers' confusion about who is or is not eligible to work. Fear that an illegal alien may be presenting a fraudulent document increases the likelihood of discrimination. We believe that an improved verification process, such as the computer registry that we believe is the best option, will reduce significantly these types of discrimination.

The Commission further recommends pilot programs to test this hypothesis before national implementation of the new verification procedure. We urge that the pilots be evaluated from the outset to determine if discrimination is reduced, as we believe will happen. Only if the pilots show that the system is effective in reducing both fraud and discrimination should national implementation commence. A measured process of this type is one of the best remedies to stop discrimination against workers who may look or sound foreign.

To increase protections against discrimination, the Commission also recommends specific procedures that should be specified in law. We recommend that verification be done after the hiring decision is made, not as part of a screening procedure. We detail steps to ensure against discrimination because of faulty information. First, an employer would initially be told only that an employee is authorized to work or that a discrepancy has been found in the database. The employer would not be informed that a person cannot be employed. If there is a discrepancy in the database, the employee would have a specified period of time to correct the information in the database. The employer would be required to continue employment of this individual throughout the period of secondary verification. Only if the secondary verification demonstrates that the individual does not have work authorization would the employer be required to dismiss the worker. The employer is protected against employer sanctions penalties as long as he or she follows the verification procedures and obtains an authorization code from the computer registry. If the employer fails to follow the procedures—for example, by refusing continued hiring of a worker during secondary verification—the law should make it clear that this is a violation with attendant penalties.

In addition, the Commission recommends that the Office of Special Counsel for Immigration Related Unfair Employment Practices become more proactive in identifying and combatting discrimination, again with an eye towards prevention. The Commission urges OSC to focus its efforts on independent targeted investigations in industries and in geographic areas where immigration-related discrimination is

likely and to implement assessment programs that will provide the information to enable better targeting of its activities. We reference testing as one likely mechanism to obtain this information. With the results, OSC should engage in greater education of employers and workers to reduce the potential for discrimination.

The Commission has also looked at post facto remedies and penalties against employers who discriminate. In addition to paying fines, employers may be required to take specific actions such as: Stopping the prohibited practice; hiring or reinstating (with or without back pay) the individuals involved; lifting any restrictions on the employee's assignments, work shifts, or movements; posting notices about employee rights and employer obligations; educating all relevant personnel about anti-discrimination requirements; and removing warnings or negative information from an employee's file.

These remedies are common in other discrimination contexts, and they can be applied to immigration-related discrimination.

I hope this letter answers your question. Please let me know if we can provide further information.

Sincerely,

BARBARA JORDAN, *Chair.*

Mr. BECERRA. Let me ask another question, still continuing on this subject. If we don't put in the resources, if we don't see the will, and if we see pending before us the specter of discrimination and loss of civil liberties, should we abandon TVS?

Ms. JORDAN. You should, if this Commission is still in existence, you should order—because we are created by the Congress—order us to find a fashion, a new verification in order to cure what has been discovered. That is the—that certainly remains within your power to do. As we monitor it, if we see that what we have recommended is really not what we thought it would be, then there is certainly no pride; that is bordering on arrogance of not correcting some error which you have made.

Mr. BECERRA. Mr. Chairman, if I may be indulged for one last actually more comment than question—I want to follow up on what was said by Dr. Martin with regard to credit cards. I'm very suspicious of credit cards. I believe you're right; the technology has gotten us to a point where we can have these instantaneous checks done, and, obviously, the credit card systems that we have in this country prove that. But I think there's a difference, a great difference, between a credit card check and a check for employment verification because in one you're checking just to find out if a sale can be made, and it could be for $5 or maybe perhaps $5,000. In this case, as we just finished discussing with Professor Jordan, we're talking about the possibility of someone's livelihood. An economic check to a credit card is usually done after the credit card company has decided, usually through a credit check itself, if this person should be granted a card. I don't know of anything quite as similar or as innocuous as perhaps what the credit cards go through. Credit cards also don't have to abide by as many rigorous laws against discrimination, and so forth, as the Government should when it comes to what it provides—when it provides some authorization, for example, for work for individuals.

But perhaps my greatest concern is my experience with a credit card. I happen to have a credit card, an American Express card, that's been given to me through the Federal Government for travel purposes. On several occasions I've had my credit card denied, and I've been told that it's because the bills haven't been paid.

[Laughter.]

Mr. BECERRA. Now I must tell you it concerns me greatly that with a credit card which says on here "the United States Government" on it that I still get rejected, and I suspect if there are—well, maybe these days the U.S. Government is the worst of debtors to have get a card. But I would be very concerned if, even with a credit card, the U.S. Government is having problems, and I would hate to put my hands or the hands of anyone seeking livelihood in the hands of a credit card, even if it has the backing of the U.S. Government. So I just make those comments because I think we should move very cautiously in going forward with anything that may affect the ability of someone to ultimately prosper and have that American dream.

Mr. SMITH. Mr. Becerra, I point out as a possible explanation the U.S. Government does have a deficit and does have a debt, and maybe that had something to do with the response that you might have gotten.

The gentleman from California, Mr. Bono, is recognized for additional questions.

Mr. BONO. Yes. I just want to, since the issue of discrimination was brought up and that will somehow involve how you structure what you're going to do, I presume—and I just would like to submit that when we look at the area of discrimination, we also look at the area of reverse discrimination, so that we protect both sides. It's interesting to me that whenever we speak of discrimination, it's always against one side and really never considers the other side. There's a lot of small businessmen out there, myself included in that—I own restaurants and interviewed a lot of people, and on many cases, one where I had to hire a lawyer and spend a lot of money and eventually get out of it after that expense, and on other occasions have to go through numerous rigors. I don't discriminate against anyone, but I did have to endure that, and it's not pleasant.

And someone who doesn't have the dollars to deal with that, it could hurt their economy, maybe put them out of business. A small business doesn't have that big of a margin.

So if we are going to discuss discrimination, I hope we discuss both sides of discrimination and recognize that a lot of people can become victims of discrimination as well. So I——

Mr. BERMAN. Would the gentleman yield?

Mr. BONO. Yes.

Mr. BERMAN. This issue of reverse discrimination is actually very interesting. It's very interesting why certain industries seem to prefer to hire people who are here illegally and want to discriminate against the people who are legally authorized to work in the United States because they find this to be a more exploitable work force. And so I think attention to the reverse discrimination aspect of this in that sense is worth looking at.

Mr. BONO. Thank you very much. That was just my point, that there is a total picture here, and I think we have to look at the entire picture and make sure no one is victimized, including the employer.

Mr. SMITH. Thank you, Mr. Bono.

Professor Jordan, thank you for being with us today, and thank you and the Commission for your good work. We look forward to your future reports as well. Thank you, too, Dr. Martin.

Ms. JORDAN. Thank you, Congressman.

Mr. SMITH. Would our second panel please come forward and take their seats. And while you're being seated, I'll introduce you.

We welcome Dr. Robert L. Bach, Executive Associate Commissioner, Policy and Planning, U.S. Immigration and Naturalization Service, accompanied by John E. Nahan, Director, Systematic Alien Verification for Entitlements, or the SAVE Program; William Ludwig, Administrator, Food and Consumer Service, U.S. Department of Agriculture; Wendell E. Primus, Deputy Assistant Secretary for Human Services Policy, U.S. Department of Health and Human Services, accompanied by Sandy Crank, Associate Commissioner, Social Security Administration, and also Nelson Diaz, General Counsel, U.S. Department of Housing and Urban Development.

Thank you all for being with us today.

Without objection, your complete testimony will be made a part of the record, and I'd like to ask you all if you would keep your introductory remarks to 5 minutes. And we will start with Dr. Bach.

STATEMENT OF ROBERT L. BACH, EXECUTIVE ASSOCIATE COMMISSIONER, POLICY AND PLANNING, U.S. IMMIGRATION AND NATURALIZATION SERVICE, ACCOMPANIED BY JOHN E. NAHAN, DIRECTOR, SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS PROGRAM

Mr. BACH. Thank you, Mr. Chairman. Good morning, members of the subcommittee.

I am particularly pleased to be here this morning to follow Professor Jordan's comments. The administration, Professor Jordan, and the Commission on Immigration Reform continue to work closely, and we look forward to pursuing similar ideas in the future.

In fact, once again, we are clearly in agreement. The four standards of measurements for the success of the evaluation pilots that Professor Jordan mentioned are clearly those of the administration. The Commission embraced, and we welcome their endorsement, our two-step pilot process, and their concerns about building walls to privacy protections and confidentiality are, in fact, our concerns as well. So we feel very good to be following the Commission on Immigration Reform, and we think we are very much together on this issue.

I'm especially pleased to be here today to discuss the extraordinary steps that this administration is taking to actively prevent the employment of unauthorized workers, jobs that American workers and legal immigrants should have. We know that if jobs are available to unauthorized workers, pressure will continue on our borders, where we are committed to deterring illegal entry, and from nonimmigrants trying to overstay their visas. Therefore, this administration proposes $93 million in its fiscal year 1996 budget for a comprehensive approach to effective workplace enforcement.

The President's 1995 budget, with the support of Congress, stopped the long-term decline in enforcement at the workplace. Now the President's fiscal year 1996 proposed budget fully reverses

this course and begins an upwards swing in the number of INS investigators. The fiscal year 1996 budget also strengthens the Department of Labor's role in the enforcement effort by increasing the enforcement of labor standards where employers have historically and unfairly relied on illegal workers.

Mr. Chairman, on March 3, INS testified before this subcommittee on employer sanctions. Today I'd like to focus only on the verification issues.

The administration, working with Congress, has already taken aggressive action to reinvent verification. This year we are taking four notable steps forward.

First, we are reducing the number of documents. We will first reduce by regulation the number of acceptable documents from 29 to 16. We will also soon propose legislation further reducing the number of acceptable documents to six.

Second, we are improving document security. At INS we are developing a new tamper-resistant employment authorization document, improving employers' ability to recognize legitimate documents, and working with the INS Forensic Document Laboratory to develop greater security.

Third, we have already begun testing a telephone-based pilot verification system.

Fourth, for over a year, the administration has been working with the State of California to verify applications for driver's license and State identification cards. Since that time, the California Department of Motor Vehicles has witnessed at least a 10-percent decline in the number of identification cards issued or sought by noncitizens.

These four steps are only a start. Last October, the administration's Interagency Working Group on Immigration immediately responded to the Commission on Immigration Reform's proposals on verification. The administration created a technical subgroup consisting primarily of INS and the Social Security Administration to begin analyzing the requirements to create new data systems, make changes to existing data bases, establish data matching requirements, calculating costs, and scheduling contracting needs.

I'd like to give you a couple of figures that we have not talked about before, Mr. Chairman. During this time when we were responding immediately to the Commission on Immigration Reform's proposals, last October, INS and SSA attempted to match electronically over 4 million alien automated records for which INS had a Social Security number already. We were able to match 85 percent of those records between our two systems. We also tried to match a sample of 500,000 alien records for which INS did not have Social Security numbers. Using just the name, date of birth, and mother's maiden name, the match rate was 47.5 percent.

We met with the Commission staff in January 1995 to discuss our preliminary insights and agreed with them that progress toward constructing a national verification system would take many years. The administration wanted quicker results. Therefore, we began developing four pilot projects to test different verification methods and technologies with full safeguards against discrimination and privacy violations. Let me tell you briefly what those four pilots are.

The first pilot is purely technical. It expands our computer matching simulation of SSA and INS data bases that had already proven to be so useful in determining whether that was possible or not.

The second pilot involves incorporating the lessons from our 1995 Telephone Verification System (TVS) pilot into a revised and expanded project that includes up to 1,000 employers. We expect to learn from our fiscal year 1995 TVS pilot the prevalence of false claims to U.S. citizenship and the incidence of discrimination. We will use that knowledge to design improvements into the fiscal year 1996 proposed expanded TVS.

The third pilot is what Susan Martin called our two-step process, the administration's two-step process to verify the status of all newly-hired employees, U.S. citizens and noncitizens. The employer would first check information on all new workers with the Social Security Administration, then turn to INS for anyone not confirmed by the SSA records. Our interagency group in the administration currently has two subgroups already working to design the details of this pilot.

The fourth pilot is already in progress. INS is working to improve the completeness, accuracy, and timeliness of its data base. SSA is studying how it could adapt its data base for use in an on-line query capacity.

The administration plans to fully evaluate and monitor each of these pilots from design through implementation to impact, paying special attention to concerns about discrimination, privacy, and confidentiality. An interagency subgroup is already at work developing recommendations to the INS for an evaluation strategy that will draw on expertise from both inside and outside the Government.

As you know, Mr. Chairman, INS is also responsible for verifying the status of aliens for certain benefit programs. The Systematic Alien Verification for Entitlements Program, SAVE, is an information service for agencies and institutions granting entitlement benefits. The SAVE Program is supported by a data base that includes records on approximately 50 million aliens. Currently, a total of 126 agencies located in over 2,000 sites across the Nation access the SAVE Program.

Mr. SMITH. Dr. Bach, I know it was a fast 5 minutes, but could you conclude your comments?

Mr. BACH. I'm concluding now, sir.

Mr. SMITH. Well, go on. OK.

Mr. BACH. I'm concluding now.

In a real sense, we already have a large-scale verification in progress.

So, Mr. Chairman, the administration has already begun to effectively increase its capacity. We commend this subcommittee for its efforts engaging this issue and allowing us to provide you an update on our many activities.

Thank you for the time.

[The prepared statement of Mr. Bach follows:]

Prepared Statement of Robert L. Bach, Executive Associate Commissioner, Policy and Planning, U.S. Immigration and Naturalization Service

Good morning. I am pleased to be here and to have an opportunity to discuss with you some of the new initiatives this Administration is taking to secure jobs for American workers by preventing the employment of unauthorized workers.

Verification is an integral part of this Administration's illegal immigration enforcement strategy. Those involved in illegal immigration—from the illegal immigrant to our agents on the Border—know that as long as jobs are open to unauthorized workers, they will continue to try to cross the border. Our border control strategy is clearly linked to reducing incentives for illegal immigration at the workplace.

The Administration believes strongly that persons who are unlawfully in the United States should not have access to our worksites. Employers who hire unauthorized workers to undermine labor standards and wages and gain an unfair business advantage must assume a large part of the responsibility for illegal immigration. We must stop employers who break the law by either hiring unauthorized workers or violating established labor standards. As Secretary of Labor Robert Reich has said, employment of illegal workers leads to 19th century workplaces with 19th century working conditions.

Our goal is to secure the workplace so that U.S. citizens and legal immigrants have the opportunity to find jobs and advance within their institutions of employment. Employers must be convinced that it is better to improve job conditions and to train their workers to be more productive than to cut wages and working conditions by hiring unauthorized workers.

The President's FY 96 budget proposal seeks to reverse the course of the long-term decline in enforcement at the workplace. He has proposed an increase in INS investigators to make employer sanctions work, and an equally important increase in the number of Department of Labor investigators to enforce labor standards in those industries and labor markets where employers have historically and unfairly relied on illegal workers.

The President has also instructed agencies throughout the government to take strong strides forward in improving our systems of verification for both employment authorization and for access to public benefits. Our goal is to prevent persons illegally residing in the United States from gaining access to public benefits, except where safety, health, and basic education are at risk.

We seek support from all of you in this effort. We have worked with, and remain committed to working with the Commission on Immigration Reform to examine and test their ideas on verification. We are also striving to include in our planning and designing of pilot projects all sectors of the American public that have legitimate questions and concerns about how these verification efforts may work.

Principles of Verification

This Administration's deep commitment to effective workplace enforcement requires that we hold employers responsible for knowingly hiring unauthorized workers. The Administration believes that prevention is the best enforcement strategy—whether we prevent illegal immigration at the border through our deterrence operations, or prevent hiring illegal workers through raising the costs to employers for engaging in unfair business practices. Our verification proposals are designed to complement and to support an aggressive enforcement agenda that targets the worst employers.

A comprehensive verification system is based on three common sense principles:

First, is effectiveness through use of technology. Verification systems should draw on intelligent, effective technologies to streamline the process, reduce paperwork burdens that are confusing and counterproductive, and ensure cost effectiveness.

At a time in our nation's history when we are all more interested in preventing unauthorized employment, technological advances will help business and workers comply with the law. Employers should know as quickly and with as much certainty as possible if the person they just hired is an authorized worker. If we achieve that goal, no one should have a reason or an excuse for hiring an unauthorized worker. And they should be held fully accountable if they do so.

Second, this Administration takes a common sense approach to regulatory reform, and our efforts to build verification systems are no exception. We are aggressively reducing excessive regulations in many areas and are wary to create new ones unless there are clear and compelling reasons to do so. We believe control of illegal immigration is a compelling reason and that an effective verification system reduces regulatory burdens rather than increases them.

Our focus with respect to verification is building a system that ensures compliance. We want to increase the knowledge among employers that if they violate the rules they will be penalized.

We also want to eliminate the terribly destructive presumption among some employers that workers simply because they have an accent or by their appearance, are illegal until proven legal.

Our goal is to make employers and workers feel secure that if they follow the rules voluntarily, they will be protected from excessive paperwork investigations and, for workers, from discrimination. Employers and workers should participate in the verification process because it helps them both in hiring a qualified and authorized workforce and in preventing discrimination.

Third, the Administration believes there are crucial new ideas about verification to test and evaluate. Rather than jousting over details that can not be resolved in the abstract, we believe the approach should be—and we understand the Commission on Immigration Reform to say—that we must start to build a variety of approaches, testing each, discarding what does not work and improving on those that do. We are proposing a set of pilot projects to test several fundamental components of verification systems. For each, we are planning extensive evaluation efforts to ensure that we learn how to move effectively on to the next stage.

Progress and Performance

The Administration, working with Congress, has already taken aggressive action to reinvent verification and to incorporate these principles in a verification system.

In FY 95 we have taken 3 notable steps forward.

DOCUMENT REDUCTION

Reduction of the number of documents that can be used as evidence of employment authorization and identity is of vital importance in our efforts to assist employers in verifying their new employees' status and in combatting the use of forged and counterfeit documents.

A ripe candidate for reduction of regulatory paperwork that plagues American business and workers is the number of documents used to establish identity and work eligibility for the Form I–9. It is a prime example of excessive paperwork that leads to confusion that hurts both small businesses and workers.

In 1986, Congress specified 10 documents to be accepted by employers to verify the identity, work eligibility or both of newly hired employees. By regulation, the Immigration and Naturalization Service specified another 19 documents. Employers are directed to accept documents presented to them that appear reasonably genuine and that relate to the person presenting them. Experience shows these documents have been susceptible to fraud and confusing to some employers.

In response to these problems, the Administration will reduce the number of documents acceptable for establishing identity and work eligibility. This action will reduce the opportunity for fraud and make verification simpler for employers. INS expects to publish a supplement to a proposed rule which would reduce the number of acceptable documents from 29 to 16.

The Administration will also propose legislation further reducing the number of acceptable documents to six. A passport, Employment Authorization Card, and an Alien Registration Receipt Card (Form I–551) will serve as single documents that show both identity and authorization to work. In their absence, a combination of a Social Security card, and either a state ID or driver's license.

Before the new rule takes effect, INS will distribute—as part of its education effort—its revised Forms I–9 and the M–274, *Handbook for Employers* to 8 million employers. The *Handbook* will explain the changes and provide explanation for completing the new Form I–9. These changes will make it easier for employers to comply with the employment eligibility verification requirements. This should encourage compliance with the law and reduce confusion over documents and the potential for employment discrimination based upon misapplication of the employment eligibility verification requirements.

DOCUMENT SECURITY

An employment authorization verification system is only as sound as the validity of the documents on which it is based. Therefore, we are developing a new, tamper-resistant version of the current Employment Authorization Document (EAD) with a number of credit card-like security features including, if feasible, a magnetic stripe to permit immediate verification by an employer using a "point of sale" device. We

are also centralizing card production in order to lower production costs, speed service to the public, and improve employers' ability to recognize legitimate documents.

INS plays a key role in the fight against document counterfeiting and fraud. For example, INS has gathered extensive scientific and technological capabilities to counter document fraud in its Forensic Document Laboratory (FDL) which presently houses the largest U.S. reference collection of known and counterfeit international travel documents, immigration documents and vital statistics documents. This collection permits forensic comparison and identification of very high quality counterfeit documents and provides reference materials for training purposes.

The FDL has been the leader in the identification of counterfeiters and vendors of fraudulent documents by identifying their fingerprints on documents which have been purchased through undercover operations and by linking those fingerprints to documents which have been sold in various parts of the United States and overseas. The FDL's forensic Document Link Identification System has made it possible to connect counterfeit document cases originating in various states to common sources and often to specific counterfeiters, thereby giving us a more accurate picture of the counterfeiting problem and identifying the origin of many of the documents sold throughout the United States.

By providing expert testimony in major counterfeiting cases, FDL experts have strengthened our cases to an unprecedented degree. This has resulted in a conviction rate of major counterfeiters of more than 97 percent once the case goes to trial. The FDL has played a major role in enforcement of employer sanctions as well as administration of other immigration programs.

EXPAND THE TELEPHONE VERIFICATION PILOT PROGRAM

As authorized by IRCA, INS developed and initiated the Telephone Verification System (TVS) Pilot as an alternate system for employers to confirm the employment eligibility of newly hired, non-citizen employees.

Nine employers have been participating in this voluntary program in which, after complying with the Form I–9 verification procedures, they can access the INS automated database to confirm the employment eligibility of the newly hired non-citizens.

TVS works much like a retail credit card check where employers gain access to the INS automated database by telephone and receive an instantaneous response with the newly hired employees' employment authorization status. If INS has no information on an individual or reports the employee lacks authorization, the employer is told to submit a secondary verification by mail to a designated local INS office. If the newly hired non-citizen's employment authorization cannot be verified through the secondary process, the employee may go to the nearest INS office for possible resolution of the matter.

The nine employers in Phase I of TVS strongly endorsed its technical feasibility and its benefit to employers. TVS will deter fraud since it immediately checks and verifies with INS the employee's status. This system reduces the value of fraudulent documents because they cannot be verified by INS records. This type of verification gives employers greater assurance that non-citizen employees hired and verified are truly authorized to work in the United States.

This fiscal year we are expanding from the original 9 to 200 employers to provide the first adequate test of this approach, including the feasibility of having employers pay for this service. We are in the design process now. Selection of volunteer employers in the Los Angeles area, where the pilot is to be undertaken, is about to begin and we expect to have the pilot operational by fall. We are also designing an evaluation of the pilot that will draw on expertise within and outside the government.

PILOT VERIFICATION PROJECTS

In October, 1994, we were very pleased when the Commission on Immigration Reform issued their interim report which endorsed many of the steps the Administration was taking both to secure employment for authorized workers and to control illegal immigration in general. They also proposed a new system to verify employment eligibility and a series of pilot projects to test various verification methods. As Commissioner Meissner said at the time, these were fresh new ideas which we immediately set out to examine carefully.

The Administration's Interagency Working Group on Immigration, co-chaired by Carol Rasco, Special Assistant to the President for Domestic Policy, and Doris Meissner, INS Commissioner, organized a technical subgroup to begin examining the feasibility of these proposals in October.

As a first step, the INS and the Social Security Administration (SSA) began an analysis of the requirements to create new data systems, make changes to existing databases, establish data matching requirements, calculate costs, and schedule contracting needs. We met with the Commission staff in January to discuss our preliminary insights and agreed that progress toward constructing a verification system would take many years. The Commission had already recommended pilots as a way to push the process along. And the Administration certainly did not want to wait to improve its capacity to verify employment authorization and eligibility for public benefits. The Administration developed a plan to design and test different approaches to improve employment verification within a shorter 2 to 3 year time frame.

We are developing four pilots that test different concepts, technologies, and safeguards against discrimination and privacy violations. All will have extensive evaluation activities built into their design.

PILOT 1: SSA/INS DATABASE MATCHING AND SIMULATION

One of the primary questions raised in the Commission's proposal for a national database was whether it was feasible technologically to link the INS and SSA databases for use in a verification process. The first pilot involves a computer simulation that matches real names between databases but does not check the identity of those people. For this purpose, the goal is to determine the problems which could be experienced in linking INS and SSA databases. Although this is a technical area, I would like to explain a little about the problem we are facing. The SSA database includes Social Security numbers (SSNs) on virtually all lawful residents of the United States. The INS databases are logically focused on the noncitizen population and are accessed by A-number, or for some nonimmigrant visitors, by the number on their arrival-departure (I–94) document. The INS database includes the SSN on a small portion of cases in its files.

So far we have looked at the SSA and INS databases for ways of matching, linking, and devising strategies for making the two databases compatible. This might include putting SSNs on the INS database, or less likely, putting alien numbers on the SSA database.

Matching records between databases is an especially difficult task for many of the names we are trying to match from the INS database. It is generally much harder to match names which have been transliterated from other alphabets or which include multiple surnames. Different databases may include varying combinations or order of these names.

Our plan for FY 96 is to pursue this simulation more extensively and systematically. Technically-linked databases, however, are a test of just one part of a potential verification system. Although some INS and SSA records have been matched electronically, we have not verified that these matches are accurate. We have not added records or made any other systems changes on the basis of the electronic match, nor, to date, have efforts been made to verify if the match was correct. The concept of a simulation protects all information from use in real life situations to prevent problems that may arise related to privacy or confidentiality of records.

PILOT 2: EXPANSION OF TVS

Contingent on FY 96 funding, we plan to expand the TVS pilot to up to 1,000 employers. We have begun to design this expansion over FY 95, and will incorporate the lessons we expect to learn from the current TVS pilot with 200 employers. In particular, the FY 95 pilot will examine false claims to citizenship and whether it will be necessary to pursue a broader verification effort rather than continue to focus on a simpler TVS-like system that focuses primarily on checking the status of non-citizen. We are also very concerned about the potential for discrimination. Our evaluation of the 1995 TVS pilot will address both questions and help build a more effective program in FY 96.

PILOT 3: A TWO-STEP PROCESS

The third pilot under discussion is a two-step verification process which would potentially address some of the inadequacies of the Telephone Verification System. On a pilot basis, for example, the plan is to verify the status of all persons newly hired—U.S. citizens as well as aliens. This pilot is early in the design phase and is contingent on funding in our FY 96 budget. We are again working closely within the Administration's Interagency framework to get comments and suggestions on how such a system could best balance technological, privacy, and antidiscrimination concerns.

A two-step approach to employment verification is premised on the belief that *all* new hires should be verified electronically. The first electronic check would be with the Social Security Administration which has records on all authorized U.S. workers. For non-citizens whose work eligibility could not be confirmed by the SSA records check, one potential procedure is to request employers to verify with INS. There are many options on the design of this pilot and we are just beginning to explore all of them. We could select different types or sizes of employers in different states and types of areas, use different technologies to access the databases, and even vary the process and the type of documents, if any, that an employee would show an employer.

PILOT 4: DATABASE CHANGES

The fourth pilot is, in many ways, already a work in progress. INS is working to improve the completeness, accuracy and timeliness of its database. SSA is looking into how it could adapt its database for use in an on-line query capacity that would allow employers or public agencies to gain restricted access to a part of the data system.

These initiatives involve reducing error and creating a capacity for resolving any errors which might now exist. The goal of these improvements is to enable INS to provide timely and accurate responses to verification requests, whether the system is the telephone verification system currently being piloted, or another system which may be tested in the future. Obviously, accurate and timely data has benefits to INS which far transcend verification of eligibility for employment.

SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS PROGRAM

INS is also responsible for verifying the status of aliens for certain benefit programs. Federal departments, usually through the state and local offices responsible for administering entitlement programs, are required to ensure that program benefits are provided only to applicants who meet program eligibility requirements, including, where applicable, immigration status.

The Systematic Alien Verification for Entitlements Program (SAVE) is provided by the INS as an information service for agencies and institutions granting entitlement benefits. The SAVE Program is designed to aid eligibility workers in determining an alien's immigration status.

The Immigration Reform and Control Act of 1986 (IRCA) formalized this verification process by requiring certain Federal programs to verify the immigration status of all non-citizen applicants through INS as part of the eligibility determination process—the Food Stamp Program, Aid to Dependent Children, the Medicaid Program, Territorial Assistance Programs, Unemployment Compensation, Educational Assistance, and Housing Assistance.

All of the mandated Federal agencies except for the Department of Housing and Urban Development, as well as another seven non-mandated agencies, have signed agreements with INS to participate in the SAVE Program. INS is currently negotiating an agreement with the Department of Housing and Urban Development (HUD) to implement their participation of approximately 25,000 user entities in the SAVE Program beginning in June 1995.

The SAVE Program is supported by the Alien Status Verification Index (ASVI) database. The ASVI database is stored and maintained by Martin Marietta Information Systems. INS recently completed database enhancements to increase the accuracy and timeliness of this data and added approximately 21 million nonimmigrant records. The addition of nonimmigrant data increased the size of the database from 28 million to approximately 50 million records. Through these enhancements, a greater percentage of verifications can be confirmed at the time of the initial electronic inquiry.

Increasing the number of status checks which can be handled through the automated system on the initial inquiry is one of the SAVE system's priorities. We are exploring ways of expanding this capability and making checks of secondary databases. Greater primary verification capability would significantly reduce the burden and number of mail-in secondary checks provide better service to users, and reduce the number of cases-handled manually by INS.

There are currently a total of 126 user agencies located in over 2,000 sites throughout the nation with access to the Alien Status Verification Index. Since implementation of the SAVE Program in FY 1989 through January 1995, approximately 18 million queries have been made of this INS automated database, with an estimated 130,000 unentitled non-citizen applicants for benefits identified through the process.

About a year ago, the State of California implemented a law requiring verification of legal presence of applicants for driver's licenses and state identification cards. To assist the State of California Department of Motor Vehicles (DMV), we signed an agreement for them to verify the legal presence of their non-citizen driver's license and state identification card applicants.

To assist California DMV's requirements, INS revised the Alien Status Verification Index system messages and status information on approximately 25 million non-immigrant records was added. Since INS began working with California to institute this verification system, the California DMV has seen a 28-percent decline in the number of identification cards sought by noncitizens, and a 3-percent decline in driver's license applications by non-citizens.

CONCLUSION

The Administration's actions and intent are clear: We will move effectively, efficiently, and wisely to increase the capacity to verify the lawful status of new employees and persons who seek public benefits. Our overall illegal immigration control strategy requires it and, we believe, the American people demand it. We hope Congress will support us and share in our actions and plans.

In the current fiscal year, we are uncovering and identifying the problems we have inherited and now confront because of the increased demand for access to the INS data systems. This is an uphill battle, but one that we have fully engaged. We are aggressively pursuing improvements in FY 95 and seeking new approaches in FY 96.

Our approach, at this point, is one of problem-solving. We have identified for the Commission on Immigration Reform, Congress and the general public many of the problems and challenges you will hear more about today. We are working to solve them so that we can meet our own desire, as well as that of agencies, states and localities, for increased verification. We hope everyone will join us in our common sense approach to this critical need.

Thank you for this time and I will gladly respond to any questions you may have.

Mr. SMITH. Thank you, Dr. Bach.

Mr. Ludwig.

STATEMENT OF WILLIAM E. LUDWIG, ADMINISTRATOR, FOOD AND CONSUMER SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. LUDWIG. Yes, and I'll certainly try to stay within your 5 minutes.

Mr. Chairman and members of the subcommittee, the U.S. Department of Agriculture's Food and Consumer Service administers 16 domestic feeding programs, including the anchor programs of the Food Stamp Program, the Child Nutrition Programs, and the WIC Program. I'm pleased to be here today to discuss specifically the Food Stamp Program's rules affecting aliens.

The Food Stamp Program was established 30 years ago to supplement the food purchasing power and nutritional status of the Nation's low-income households. Currently, the program provides benefits to 11 million low-income households and 27 million people which live month to month on this program.

Mr. Chairman, there are several categories of aliens identified in the Food Stamp Act. Lawfully-admitted immigrants, refugees, individuals who have been given status as special agricultural workers, aged, blind, disabled, amnesty aliens, and amnesty aliens now converted to permanent resident status, as well as certain members of their household are all eligible for food stamps benefits under existing law. Aliens unlawfully in the United States are not eligible to receive food stamps. Currently, we estimate that 1.6 million eligible aliens receive benefits.

Two of our most important goals are ensuring that all people who are eligible for benefits can receive them and no one who is ineligible receives assistance. Benefits can only be used to purchase eligible food at authorized stores. In order to achieve these results, the Food Stamp Program has strict requirements for verification of applicants.

To establish eligibility, applicants must show proof of citizenship; if questionable, they must document that they are members of one of the eligible categories of aliens identified in the Food Stamp Act. Aliens without alien registration recipient cards, arrival/departure records, or other comparable documents may request documentation of their status by submitting application for verification of information from Immigration and Naturalization Service.

The Food Stamp Act dictates that every food stamp application form must inform applicants that the information that they provide will be subject to verification by Federal, State, and local officials. Anyone who knowingly gives incorrect information will be denied benefits and face administrative disqualification.

The local food stamp office takes appropriate steps to verify this information and may request a household to provide additional documentation. If the office establishes that that person is in the United States illegally, in addition to denying the application, the Food Stamp Act requires them to report this to INS.

Mr. Chairman, the President and USDA are committed to ensuring that all Americans legally eligible to receive benefits are allowed to have access to a healthy diet. We will work with the committee to see that this occurs.

If you have any questions, I'd be glad to answer them.

[The prepared statement of Mr. Ludwig follows:]

PREPARED STATEMENT OF WILLIAM E. LUDWIG, ADMINISTRATOR, FOOD AND CONSUMER SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Good morning, Mr. Chairman and Members of the Subcommittee. The U.S. Department of Agriculture's Food and Consumer Service (FCS) administers 16 domestic feeding programs, including the anchor programs of the Food Stamp Program, the Child Nutrition Programs, and the WIC Program. I am pleased to be here today to discuss specifically the Food Stamp Program's rules affecting aliens.

The Food Stamp Program was established thirty years ago to supplement the food purchasing power and nutritional status of the nation's low-income households. Currently, the program provides benefits to nearly 11 million low-income households—helping over 27 million people each month who live near or below the poverty line. While benefits are one-hundred percent Federally funded, the program is administered by the States, which contribute fifty percent of the administrative funding.

Mr. Chairman, there are several categories of aliens identified in the Food Stamp Act eligible for food stamps. Lawfully admitted immigrants; refugees; individuals who have been given status as special agricultural workers; aged, blind, or disabled amnesty aliens; and amnesty aliens now converted to permanent resident status as well as certain members of their households are all eligible for food stamp benefits under existing law, Aliens unlawfully in the United States are not eligible to receive food stamps. Currently, we estimate that nearly 1.6 million eligible aliens receive benefits.

Households with both food stamp eligible and ineligible members may receive benefits on behalf of the eligible members only. In such cases, the sharing of income by the ineligible and eligible members is considered. In the case of legal aliens who have sponsors and who have signed an affidavit of support, a portion of that sponsor's income is deemed as available to the alien for up to three years.

Two of our most important goals are ensuring that (1) all people who are eligible for benefits can receive them, and (2) no one who is ineligible receives assistance. Benefits can only be used to purchase eligible food at authorized stores. In order

to achieve these results, the Food Stamp Program has strict requirements for verifying the circumstances of applicants.

To establish eligibility, applicants must show proof of citizenship, if questionable, or document that they are members of one of the eligible categories of aliens identified in the Food Stamp Act. Aliens without alien registration receipt cards, arrival-departure records, or other comparable documents may request documentation of their status by submitting an Application for Verification of Information from Immigration and Naturalization Service (INS) records.

The Food Stamp Act dictates that every food stamp application form must inform applicants that the information they provide will be subject to verification by Federal, State and local officials. Anyone who knowingly gives incorrect information will be denied benefits and will face administrative disqualification.

Heads of households applying for food stamps are required to sign a statement attesting that all members of the food stamp household are U.S. citizens or eligible aliens. In signing the application, the head of the household also attests, under penalty of perjury, that all the statements in the application are true.

The local food stamp office takes appropriate steps to verify this statement, and may request a household to provide additional documentation. If the office establishes that a person is in the United States illegally, in addition to denying the application, the Food Stamp Act requires them to report this to the INS.

Most people who participate in the Supplemental Security Income or Aid to Families with Dependent Children programs are categorically eligible for food stamps. However, aliens who qualify for benefits under these programs can only receive food stamps if they are a member of one of the food stamp eligible categories mentioned.

Food stamp eligibility workers can use the Systematic Alien Verification for Entitlements (SAVE) Program when screening applicants for benefits. As its name implies, SAVE is a computerized system used by caseworkers to confirm that INS documents presented by applicants are valid.

States also have the authority to conduct pre-certification investigations of food stamp applicants—checking their statements against tax and employment records, birth and death records, school records, or other sources. Benefits will be denied to applicants who have misrepresented their circumstances. In Fiscal Year 1994, benefits were denied to over 115,125 individuals as a result of pre-certification investigations. First-month savings for these investigations was over $27.5 million.

If a State approves a food stamp applicant and subsequently finds that benefits were fraudulently obtained, the State can prosecute him or her to recover the benefits. States use disqualification hearings and agreements and criminal prosecutions to remedy situations where recipients have defrauded the program.

Individuals who defraud the program may face fines up to $10,000 or imprisonment up to five years, depending upon the severity of the abuse. Recipients may be disqualified from participating in the program for six months to permanently, depending upon the severity of the offense and prior disqualification history. This Administration will not tolerate fraud and abuse in the Food Stamp Program. The health and well-being of millions of low-income people depends upon the food security provided by the Food Stamp Program.

USDA will shortly present proposals to reform and reinvent the Food Stamp Program. The proposals grow out of a year-long thorough review of the program. Our reinvention plan is founded on six core principles for change: Nutrition security, modernizing benefit delivery, state flexibility, economic responsiveness, personal responsibility, and program integrity.

Important program changes are well underway. USDA recently announced a major initiative in continuing the push to eliminate fraud in the Food Stamp Program. The comprehensive strategy involves a three-tiered attack on food stamp trafficking and fraud, involving: 1) pre-authorization screening, 2) post-authorization controls, and 3) stiffer penalties.

Last week, the House of Representatives passed H.R. 4, legislation that would deny most legal immigrants benefits under five Federal programs, including the Food Stamp Program and the School Lunch and Breakfast Programs. Deputy Assistant Secretary Primus will be speaking this morning in some detail concerning this legislation and its potential effect on immigrants. However, I would like to call your attention to specific consequences for the Federal nutrition programs.

In FY 1993, 1.5 million low-income legal aliens received food stamp assistance—1,081,000 were permanent resident aliens, 337,000 were refugees, and 99,000 were seasonal agricultural workers and amnesty applicants. Under H.R. 4, virtually all, or 1.3 million of these recipients would no longer be eligible for food stamps. Only some elderly legal residents, military personnel, recent refugees and legal permanent residents with disabilities would remain eligible.

Sixty-three percent of eligible alien households currently receiving food stamp benefits contain children and twenty-three percent contain an elderly person. These households are residing in the U.S. lawfully, many of them in California, Texas, Florida, New York and Illinois—states which will be left with the responsibility of providing assistance when the households become ineligible for federal assistance. Thus, the consequences for States and communities with high immigrant populations are clear. In order to provide services for these populations, states and communities would have to use more State and local resources than is presently the case.

With respect to the National School Lunch Program (NSLP) and the School Breakfast Program, H.R. 4 expands or creates three burdensome requirements for schools in regard to aliens. First, H.R. 4 would require schools to collect information from all students who wish to receive subsidized school meals, not just low-income children. Second, citizenship and visa status would need to be obtained in addition to income data. Finally, schools would be put in the position of serving as local immigration and naturalization agencies and having their paperwork burden increased. This would detract schools from their primary objective of education, and in effect would create an unfunded mandate. Another aspect is it could stigmatize children and even deprive them of an education if their parents were afraid to send them to school and risk their immigration status being discovered.

Mr. Chairman, the President and USDA are committed to ensuring that all Americans, legally eligible to receive benefits, are allowed to have access to a healthy diet. We will work with the Committee to see that this occurs.

Mr. Chairman, Members of the Subcommittee, this concludes my prepared remarks. I would be happy to answer any questions you may have at this time.

Mr. SMITH. Thank you, Mr. Ludwig.

Mr. Primus.

STATEMENT OF WENDELL E. PRIMUS, DEPUTY SECRETARY FOR HUMAN SERVICES POLICY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ACCOMPANIED BY SANDY CRANK, ASSOCIATE COMMISSIONER, SOCIAL SECURITY ADMINISTRATION, AND MACK STORRS, DIVISION DIRECTOR FOR AFDC POLICY

Mr. PRIMUS. Mr. Chairman and members of the subcommittee, I am pleased to be here today to discuss issues related to the verification of aliens' eligibility for receipt of benefits and the SAVE Program. I will summarize my statement, which provides an overview of the eligibility determination process for aliens under the AFDC Program, the Medicaid Program, and the SSI Program.

Under current law, an alien must be a legal permanent resident or permanently residing under color of law to be eligible for benefits under these programs. Our procedures ensure that each applicant is properly identified as either a citizen or an eligible alien before making additional eligibility determinations.

The Social Security Act requires that applicants for certain public assistance programs, including AFDC and Medicaid, make a written declaration as to their citizenship or immigration status. To meet this requirement, State agencies may develop a separate declaration form or incorporate the declaration into their own standard AFDC application. In addition, the Social Security Act requires that all persons applying for AFDC submit a Social Security number or evidence that they have applied for a number. The Social Security Administration verifies the authenticity of that number through its automated verification systems.

States are also required to use Social Security numbers in computer matches with SSA and IRS records and/or State employment data to verify the income and eligibility of applicants. An invalid Social Security number would be detected through this process.

Noncitizens who apply for AFDC must also submit an INS document that shows alien status, for example, the alien registration receipt card, INS form I–551, more commonly referred to as the "green card."

IRCA required States to verify the legal status of all aliens through direct access to INS via the SAVE process. This is a two-step verification process. The primary verification is accomplished through the centralized automated data base, and although details of the procedures vary States have an electronic link; for example, a voice response unit or tape matches to the INS data base. If the alien registration number cannot be verified through the automated system, the State sends a photocopy of the documentation submitted by the alien to INS. INS reviews and verifies the alien's status within 10 days through a secondary manual procedure.

In fiscal year 1993, States reported receiving over 3.8 million AFDC applications. Slightly less than 1 million of those applications were denied. States reported that about 5,300 applications were denied because the applicant or other household member was an undocumented alien. In other words, less than 2/10 of 1 percent of all AFDC applications were denied due to a problem in documenting alien status. We believe these data indicate that most ineligible aliens are aware of the restrictions on their receipt of welfare benefits, and, therefore, do not apply for benefits.

The Department and the States also operate an AFDC quality control system to help ensure that taxpayer dollars are used properly, and this system involves an extensive analysis of the case record. The most recently published quality control data indicate that in fiscal year 1993 only 2/10 of 1 percent of the sample cases contain errors related to citizenship and alien status. We are convinced that these procedures ensure that few illegal aliens apply for or receive benefits from the major means-tested programs administered by the Department.

The procedures in Medicaid and SSI are similar. In carrying out its responsibility to pay SSI benefits only to those who meet the law's requirements, SSA verifies every SSI applicant's citizenship or immigration status. And to verify citizenship, the field offices look at birth or baptismal records, U.S. passports, naturalization papers, or other documents reflecting U.S. citizenship.

SSA also has an ongoing program integrity effort, and each field office has been issued detailed confidential instructions for detecting fraudulent INS documents. These instructions help field office employees distinguish between valid documents and fraudulent or altered documents that individuals may present to SSA.

I recognize my time has expired. Let me just conclude by saying that H.R. 4, the welfare bill that was passed last week by the House, would deny most legal immigrant benefits under the five programs. We estimate that about 2.2 million legal immigrants would be denied benefits under these programs in the first full year of the bill's implementation.

Mr. Chairman, I believe we all recognize that there are some issues associated with immigration and benefit eligibility that are difficult. As I have indicated in my testimony, HHS and SSA have in place procedures to ensure that only eligible aliens receive benefits.

[The prepared statement of Mr. Primus follows:]

PREPARED STATEMENT OF WENDELL E. PRIMUS, DEPUTY ASSISTANT SECRETARY FOR HUMAN SERVICES POLICY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

INTRODUCTION

Mr. Chairman and Members of the Committee, I am pleased to be here today to discuss issues related to the verification of aliens' eligibility for receipt of cash benefits and the Systematic Alien Verification for Entitlements (SAVE) program.

My statement provides an overview of the eligibility determination process for aliens under the Aid to Families with Dependent Children program (AFDC) and the Supplemental Security Income program (SSI). Under current law, an alien must be a legal permanent resident or permanently residing under color of law (PRUCOL) to be eligible for benefits under either program. Our procedures ensure that each applicant is properly identified as either a citizen, or an eligible alien before making additional eligibility determinations.

AFDC

Aid to Families with Dependent Children (AFDC) provides financial assistance to needy families. The Federal government pays 50 to 80 percent of the benefit costs—on average about 55 percent—with the states paying the rest. Administrative costs are shared equally by the Federal government and states. The Federal government provides broad guidelines and program requirements, and states are responsible for program formulation, benefit levels and determinations, and administration. Eligibility for benefits is based on a number of factors, including the citizenship or alien status of an individual, and the income and resources available to the applicant. Federal law establishes that an applicant for AFDC must be either a citizen, a legal permanent resident, or an alien "permanently residing in the U.S. under color of law"—or PRUCOL alien. PRUCOL is not a specific immigration category, but a broad categorization of many immigration statuses that aliens may have. There are now 12 categories of PRUCOL aliens who are eligible to receive AFDC under Federal law. Amendments to the Social Security Act made by Section 121 of the Immigration Reform and Control Act of 1986 (IRCA) require that applicants for certain public assistance programs, including AFDC and Medicaid, make a written declaration as to their citizenship or immigration status. To meet this requirement, state agencies may develop a separate declaration form or incorporate the declaration into their own standard AFDC application.

In addition, the Social Security Act requires that all persons applying for AFDC submit a social security number or evidence that they have applied for a number. The Social Security Administration verifies the authenticity of that number through its automated verification systems. States are also required to use social security numbers in computer matches with SSA and IRS records, and/or state employment data to verify the income and eligibility of applicants. An invalid social security number would be detected during this process.

Non-citizens who apply for AFDC must also submit an INS document that shows alien status, for example, the Alien Registration Receipt Card, INS Form I–551 (commonly referred to as the "green card"), or INS Form I–94.

IRCA requires states to verify the legal status of all aliens through direct access to INS via the Systematic Alien Verification for Entitlements (SAVE) process. This is a two-step verification process. The primary verification is accomplished through INS's centralized automated database, known as the Alien Status Verification Index (ASVI). Although details of the procedure vary, states have an electronic link (for example, voice response unit or computer tape matches) to the INS database. If the alien registration number cannot be verified through the automated system, the state sends a photocopy of the documentation submitted by the alien to INS. INS reviews and verifies the alien's status within 10 days through a secondary manual procedure.

IRCA provides for waiver from use of the SAVE system if the state has in place an alternative system that is as effective and timely as SAVE or if use of SAVE is not cost-effective. Currently, 44 states and the District of Columbia use the SAVE system. The remaining states use their own procedures for verifying alien status.

Beginning in fiscal year 1988, states were reimbursed 100 percent of the cost of using INS's new SAVE system. Under the Omnibus Budget Reconciliation Act of 1993, the match was reduced to 50 percent for the AFDC program, which is consistent with the rate for other administrative costs. The 50 percent match rate went

into effect April 1, 1994. The Federal match rate for using SAVE for the Medicaid program has remained at 100 percent.

In FY 1993, states reported receiving over 3.8 million AFDC applications. Slightly less than one million of those applications were denied. States reported that about 5,300 applications were denied because the applicant or other household member was an "undocumented alien." In other words, less than two-tenths of one percent of all AFDC applications were denied due to a problem in documenting alien status. We believe these data indicate that most ineligible aliens are aware of the restrictions on their receipt of welfare benefits, and therefore do not apply for benefits.

DHHS and the states also operate an AFDC Quality Control (QC) system to help ensure that taxpayers' dollars are used properly. The QC review involves an analysis of a case record, a field investigation, and a determination of eligibility and payment status. The initial review is conducted by the state, using a statistically reliable sample of cases, with a federal re-review of a portion of the state sample. The QC review system includes a corrective action component that allows the Federal government to help states reduce the level of erroneous payments. The most recent published QC data indicate that, in fiscal year 1993, only two tenths of one percent of the sample cases contained errors related to citizenship and alien status. Such errors could involve excluding an eligible person from the unit, or including an ineligible person in the unit.

MEDICAID

The Medicaid program provides health care services to various categories of low-income persons, including: pregnant women, families with children, the elderly, the blind, and the disabled. The Federal government pays 50 to 78 percent of the costs—on average 57 percent—with the states paying the rest. Similar to the AFDC program, under Medicaid there are Federal requirements and guidelines, with broad discretion for states to cover additional population groups and services beyond those required and to determine provider payment rates.

As with the AFDC program, persons applying for Medicaid must make a written declaration of their citizenship or immigration status and submit an INS document that shows alien status. The Medicaid state agency must verify this status using INS's two-step SAVE process.

A State must provide its full Medicaid coverage to applicants who meet the categorical and financial eligibility criteria and who are: U.S. citizens, legal permanent residents, and PRUCOL aliens. Federal Medicaid law also requires States to cover treatment for emergency medical conditions to otherwise eligible undocumented immigrants and to legal temporary residents (such as students and tourists).

SSI

SSI is a Federal program that provides cash benefits to low-income elderly, blind, and disabled individuals. Similar to the AFDC program, in order to be eligible for SSI a person must be either a U.S. citizen, an alien lawfully admitted for permanent residence, or an alien permanently residing in the United States under color of law—a PRUCOL alien.

Again, PRUCOL is not a specific immigration category but rather a broad categorization of many immigration statuses that aliens may have. As a result of Federal Court rulings, SSI regulations include 16 specific immigration statuses of aliens who are considered PRUCOL and a category that includes as PRUCOL any aliens known to the INS, whose presence in the country is permitted, and whose departure INS does not contemplate enforcing. Undocumented aliens who are in the U.S. without the knowledge and permission of the INS are not eligible for SSI.

In carrying out its responsibility to pay SSI benefits only to those who meet the law's requirements, SSA verifies every SSI applicant's citizenship or immigration status. To verify U.S. citizenship, SSA field offices look at birth or baptismal records, U.S. passports, naturalization papers, or other documents reflecting U.S. citizenship.

In the case of aliens who allege that they are lawfully admitted for permanent residence, SSA requires that they furnish documents issued by INS. SSA field offices examine the documents using special equipment to detect invalid documents. If the documents do not contain the otherwise invisible INS codes or if they appear in any way not to be valid, SSA verifies the documents with INS.

Many of the categories of PRUCOL aliens also have INS documentation of their immigration status; some have court orders allowing them to remain in the U.S. indefinitely; and others possess no documentation at the time they apply for SSI. In every PRUCOL case, SSA contacts INS for verification of the authenticity of the documentation or to determine whether the alien is known to INS and whether INS

does or does not contemplate deporting the alien. Re-verification with INS also is done annually for all PRUCOL aliens on the SSI rolls, or more frequently if it appears that an alien's status might change.

The requirements for proof of citizenship and alien status are in SSA's regulations and operating instructions and are designed to assure that only those individuals who meet the statutory provisions for SSI eligibility are, in fact, found eligible. In any case in which SSA is looking at proof of U.S. citizenship, naturalization or immigration status and a document appears questionable, SSA checks with its sources for verification—INS for proof of naturalization or immigration status; other Federal, State, or local agencies with regard to citizenship.

Fraud Prevention Activities

SSA has an ongoing program integrity effort. The primary goal of this effort is the prevention of fraud and other violations of the Social Security Act by:

detecting and preventing attempts to defraud the programs SSA administers, and other violations of the Social Security Act and related laws;

reporting suspected violations to the HHS Office of the Inspector General;

publicizing successfully prosecuted cases in the news media;

deterring fraud through awareness and informational activities; and

seeking repayment of any benefits that were fraudulently obtained.

Each SSA field office has been issued detailed confidential instructions for detecting fraudulent INS documents. These instructions help field office employees distinguish between valid INS-issued documents and fraudulent or altered documents that individuals may present to SSA, by using a black light and special visual checkpoints. Instructions are updated periodically to reflect changes in INS documents and technology.

SSA field offices also are provided with information about characteristics of previously reported fraudulent birth certificates for each State, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands.

If SSA discovers that an applicant has presented fraudulent documents, it notifies the applicant that the application is being denied because the document presented could not be verified. The original application, copies of the false document, and related verification material are currently sent to HHS, Office of the Inspector General, for review and any necessary investigative and enforcement action.

If SSA discovers that an immigration document is false or altered, SSA releases to INS a copy of the false document and identifying information for verification and, if subsequently requested by INS, the address of the applicant for appropriate investigation.

In addition, a provision in P.L. 103–296, the "Social Security Independence and Program Improvement Act," effective October 1994, strengthened the provisions in the Social Security Act for deterring fraud and abuse in the SSI and OASDI programs by:

Requiring that third party translators certify under oath the accuracy of their translations, whether they are acting as the applicant's legal representative, and their relationship to the applicant;

Authorizing civil penalties to be imposed against third parties, medical professionals, and beneficiaries who engage in fraudulent schemes to enroll ineligible individuals in the SSI program. In addition, medical professionals may be barred from participation in Medicare and Medicaid.

Treating SSI fraud as a felony.

Clarifying SSA's authority to reopen cases where there is reason to believe that an application or supporting documents are fraudulent, and to terminate benefits expeditiously in such cases.

Requiring the HHS Inspector General to immediately notify SSA about cases under investigation for fraud, and requiring SSA to immediately reopen such cases where there is reason to believe that an application or supporting documents are fraudulent.

Requiring SSA to obtain and utilize, to the extent it is useful, pre-admission immigrant and refugee medical information, identification information, and employment history compiled by the INS or the Centers for Disease Control when developing SSI claims for aliens.

Definition of Alien Eligibility Under HR 4

As you know, HR 4, the welfare reform bill that was approved by the House last week would deny most legal immigrants benefits under five Federal programs—SSI, Medicaid, Food Stamps, the new Temporary Family Assistance Block Grant that would replace the current AFDC program, and the Social Services block grant pro-

gram. Legal immigrants who are eligible under current law and receiving benefits would become ineligible one year after enactment. Non-cash, emergency assistance (including emergency medical services) would be exempted from the general bar. In addition, the following immigrants would be exempted from the general bar on eligibility—

legal permanent residents over age 75 with 5 or more years of residence;
refugees for their first 5 years after entry;
veterans and active military personnel and their children and spouses; and
legal permanent residents who cannot take the naturalization exam due to disabilities;

Based on CBO projections, we have estimated that about 2.2 million legal immigrants would be denied benefits under the five Federal programs in the first full year of the bill's implementation (fiscal year 1997). Also, State and local governments would be allowed to deny legal immigrants assistance under their own means-tested assistance programs subject to the same exemptions as apply to Federal programs.

In addition, HR 4 would make the affidavit of support signed by sponsors legally binding. It would extend the sponsor deeming rules to until the immigrant attains citizenship. These rules ensure that benefits go only to immigrants whose sponsors' income is very low. The new deeming-until-citizenship rules would apply only to immigrants whose sponsors had signed new, legally binding affidavits of support. Finally, HR 4 would require all Federal, State, and local means-tested public assistance programs to apply the new deeming-until-citizenship rules to the few legal immigrants that would remain eligible for assistance—for example, those over age 75, the disabled, and veterans.

Even though the bill purports to make the affidavit of support legally binding, there is no effective enforcement mechanism included in the bill to achieve that objective. HR 4 does not authorize the immigrant to enforce the affidavit of support. The bill only allows government agencies (Federal, State, or local) to seek reimbursement from a sponsor, if an immigrant he or she has sponsored is provided benefits. The government is not authorized to compel the sponsor to provide financial assistance and the sponsored immigrant is specifically denied the authority to bring suit against a sponsor in cases where the sponsor has reneged on the financial responsibility promised under the affidavit.

Through these provisions, the bill has established a Catch–22 situation whereby most legal immigrants would be denied benefits under a variety of Federal, State, and local programs but they would not be able to compel the sponsors to provide financial support.

Conclusion

Mr. Chairman, I believe that we all recognize that there are some issues associated with immigration and benefit eligibility that are difficult. As I have indicated in my testimony, HHS and SSA have in place procedures to ensure that only eligible aliens receive benefits. And we must and will take whatever steps are necessary to ensure that our cash benefit programs are safeguarded from all who would attempt to abuse them whether they are ineligible aliens or other fraudulent applicants. We are committed to verification procedures and methods that will maximize program effectiveness at reduced cost. We also hope to work with this Committee to achieve improved programs that serve the eligible immigrant population.

That concludes my opening statement, Mr. Chairman. I would be pleased to try to answer any questions that the Committee may have.

Mr. Smith. Mr. Primus, thank you.

Mr. Diaz.

STATEMENT OF NELSON A. DIAZ, GENERAL COUNSEL, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. Diaz. Thank you, Mr. Chairman.

On behalf of Secretary Cisneros, I want to thank you for the opportunity to appear before you today to discuss issues regarding verification of eligibility for employment and benefits. Reducing illegal immigration, and controlling costs to the American public are priorities of this administration. At the Department of Housing and

Urban Development, we are moving aggressively to address these issues in our programs and to enforce the President's strategy.

As part of the Housing and Community Development Act of 1980, Congress sought to limit the access of noncitizens to many Federal housing assistance programs. Section 214 prohibits HUD from making the majority of housing assistance available to persons who are not U.S. citizens, nationals, or who do not qualify as specified in the statute.

Almost a year ago, my deputy testified before your committee and advised you that Secretary Cisneros was committed to implementing section 214, and he has done just that. I am pleased to advise you that on March 20 of this year HUD published its final rule implementing section 214 of the Housing and Community Development Act of 1980. There is a lot of history behind it, and you can see it in my testimony, why it had not been implemented. Many of those reasons have nothing to do with our administration or Secretary Cisneros.

The HUD programs covered by section 214 include public and Indian housing, the section 8 rental programs, rent supplement programs, the rental assistance programs, section 236 of the National Housing Act, and the homeownership assistance program under section 235 of that act. The final rule published on March 20 carefully tracks the language of your statute in section 214 and is very prescriptive in nature. Section 214 specifies the HUD programs that are covered and the categories of noncitizens that are eligible to receive HUD's financial assistance, and the procedures to be used to verify immigration status, the type of documentation that must be submitted, and who must submit the documentation, and the appeal procedures to be provided. The final rule provides, consistent with this statute, that immigration status will be verified through the use of the SAVE system. The final rule has just been issued and will take effect on June 19, 1995.

HUD is not yet in a position to provide information on how the SAVE system has worked. Although HUD has not yet signed a formal agreement with the INS to participate in the SAVE Program, HUD staff has been working with INS to gain expertise with the SAVE system, and they have also been working with the housing authorities and project owners who will be at the front line of the implementation of this section 214.

HUD believes that if there is any positive aspect to be found in the long delay in the implementation of section 214, it is that HUD, housing authorities, and project owners will have the benefit of working with an improved SAVE system and not be subject to the alleged multitude of problems that plagued it at the time of the startup.

There are two issues related to section 214 and the final rule that I want to raise because they have been raised by many others, and they may be of concern to you. First, section 214 requires recipients or applicants for HUD housing assistance to provide documentation of citizens or immigration status. Section 214 provides that each tenant and each application submit a declaration, signed under penalty of perjury, by which the tenant or applicant states whether he or she is a citizen or national of the United States, or if not, whether he or she is of qualified immigrant status. If the

applicant or tenant declares under penalty of perjury that he or she is a citizen or national, no other documentation is required. If the applicant or tenant declares that he or she is in a qualified immigrant status, proof of immigration status must be presented and verified through the SAVE system. The submission of a declaration in lieu of other documentation is not an administrative component of the rule, but what the statute requires, and it was because of your amendment to IRCA in 1986.

Second, the section 214 final rule did not apply upon publication in the Federal Register. The rule takes effect on June 19, 1995. Concern has been expressed about the reason for this effective date. Simply put, the delay in the effective date was HUD's response to the housing authorities and project owners commenting on the proposed rule. These housing providers argued convincingly in their comments on the rule that they must have the time to prepare for implementation of this section. In fact, many of them requested a delay effective date of longer than the 90 days we provided.

On both the issues of type of documentation and the delay of the effective date, concern has been expressed at HUD that measures to reserve scarce housing resources for these legally in the United States are inadequate. Only time will tell if section 214 is effective in terms of the housing resources that legally eligible persons should receive. I say that only time will tell if the legislation rather than the rule will be determined to be adequate because I noted earlier the statute is very prescriptive and the majority of the rule provisions flow directly from the statute.

Again, the information that HUD can provide at this time on the subject of verification benefits is limited. After the effective date of this rule, I believe that we will have more to say on this subject, and I would be happy to return later in the year to discuss HUD's experience with the implementation of this section.

I want to thank you for the opportunity to present you with information on this important matter to you.

[The prepared statement of Mr. Diaz follows:]

PREPARED STATEMENT OF NELSON A. DIAZ, GENERAL COUNSEL, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

On behalf of Secretary Henry G. Cisneros, I want to thank you for the opportunity to appear before you today to discuss issues regarding verification of eligibility for employment and benefits. Reducing illegal immigration and controlling costs to the American public are priorities of this administration. At the Department of Housing and Urban Development, we are moving aggressively to address these issues in our programs.

On February 7, 1995, the President announced a detailed strategy for addressing illegal immigration. My testimony today focuses on the efforts of the Department of Housing and Urban Development in support of the President's strategy.

The first prong of the strategy is to gain control of our borders. The second is to increase the number of criminal aliens removed from the United States and deterring them from reentering the country. The third is strengthening our worksite enforcement of minimum labor standards and employment sanctions, and improving the methods for verifying employment authorization.

Based on the mission and responsibility of the Department of Housing and Urban Development, our efforts in support of the President's strategy have been almost exclusively focused on the provision of housing assistance. In this area, Secretary Cisneros is fully committed to the principle that scarce public benefits, including housing resources, be reserved for those who reside legally in the United States and have been identified as eligible for public benefits.

As part of the Housing and Community Development Act of 1980, Congress sought to limit the access of non-citizens to many Federal housing assistance programs. Section 214 prohibits HUD from making the majority of its housing assistance available to persons who are not United States citizens, nationals or who do not qualify as specified in the statute.

Almost a year ago my Deputy General Counsel Elizabeth Julian testified before your committee (on May 19, 1994) and advised you that Secretary Cisneros was committed to implementing Section 214, and he has done just that. I am pleased to advise you that on March 20, 1995, HUD published its final rule implementing Section 214 of the Housing and Community Development Act of 1980.

There is a long rulemaking history surrounding Section 214, and this is not the first time that HUD published a final rule for Section 214. In 1982, HUD published a final rule on Section 214 and in 1983 the Congress enacted legislation that barred HUD from implementing Section 214. In 1986, HUD published a final rule on Section 214 and in that same year the Congress requested that HUD delay the effective date because legislative changes were intended to be made to Section 214. Those changes were made in the Immigration Reform and Control Act of 1986.

I cannot account for the inaction between 1987 and early 1993, but I can state that Secretary Cisneros made the implementation of all laws passed by the Congress (and not implemented under previous administrations) one of his highest priorities. As a result, there is now a final rule for Section 214.

The HUD programs covered by Section 214 include public and Indian housing, the Section 8 rental program, rent supplement program, the rental assistance program under Section 236 of the National Housing Act, and the homeownership assistance programs under Section 235 of that Act. The final rule published on March 20, 1995 carefully tracks the language of Section 214. Section 214 is very prescriptive in nature.

Section 214 specifies the HUD programs that are covered, the categories of noncitizens that are eligible to receive HUD financial assistance, the procedures to be used to verify immigration status, the type of documentation that must be submitted, and who must submit the document, and the appeal procedures to be provided. The final rule provides, consistent with Section 214, that immigration status will be verified through use of the SAVE system.

Because the Section 214 final rule has just been issued, and will not take effect until June 19, 1995, HUD is not yet in a position to provide information on how the SAVE system has worked. Although HUD has not yet signed a formal agreement with INS to participate in the SAVE program, HUD staff has been working with INS to gain expertise with the SAVE system, and they also have been working with the housing authorities and project owners who will be at the front line in implementation of Section 214. Although HUD is aware, through comments received on its Section 214 proposed rule, that there are criticisms of the SAVE system, HUD believes that since its implementation SAVE has significantly improved. HUD believes that if there is any positive aspect to be found in the long delay in implementation of Section 214—it is that HUD, housing authorities, and project owners will have the benefit of working with an improved SAVE system, and not be subject to the alleged multitude of problems that plagued it at the time of start-up.

There are two issues related to Section 214 and the final rule that I want to raise because they have been raised by others, and they may be of concern to you.

First, Section 214 requires recipients of and applicants for HUD housing assistance to provide documentation of citizenship or immigration status. Section 214 provides for each tenant and each applicant to submit a declaration, signed under penalty of perjury, by which the tenant or applicant states whether he or she is a citizen or national of the United States, or if not, whether he or she is in a qualifying immigration status. If the applicant or tenant declares under penalty of perjury that he or she is a citizen or national, no other documentation is required. If the applicant or tenant declares that he or she is in a qualified immigration status, proof of immigration status must be presented and verified through the SAVE system. The submission of a declaration, in lieu of other documentation, is not an administrative component of the rule: but what the statute requires.

The Immigration Reform and Control Act of 1986 (IRCA), which amended Section 214, required in the area of employment for employers to obtain proof of identity and work authorization from employees. In the area of housing, however, IRCA did not require this same sort of evidence. Rather, IRCA amended Section 214 and provided for submission of the declaration, which is what the rule requires.

Second, the Section 214 final rule did not apply upon publication in the Federal Register. The rule takes effect on June 19, 1995. Concern has been expressed about the reason for this effective date. Simply put, the delay in the effective date was HUD's response to housing authorities and project owners commenting on the pro-

posed rule. These housing providers argued convincingly in their comments on the rule that they must have the time to prepare for implementation of Section 214. In fact, many of them requested a delayed effective date of longer than 90 days.

On both the issue of type of documentation and the delayed effective date, concern has been expressed to HUD that its measures to reserve scarce housing resources for those legally in the United States are inadequate. Only time will tell if Section 214 is effective legislation to preserve HUD's housing resources for those legally eligible to receive them. I say that only time will tell if the legislation, rather than the rule, will be determined to be adequate because as I noted earlier, the statute is very prescriptive and the majority of the rule's provisions flow directly from the statute.

Again, the information that HUD can provide at this time on the subject of verification of benefits is limited. After the effective date of the Section 214 final rule, I believe that we can and will have more to say on this subject, and I would be happy to return later in the year to discuss HUD's experience with implementation of Section 214.

Thank you for the opportunity to provide you with information on this important matter.

Mr. SMITH. Mr. Diaz, thank you.

Let me start my questions and direct my first one toward Dr. Bach. What I'd like to do is read you a statement from Professor Jordan's testimony which says, "The Commission recommends that the President immediately initiate and evaluate pilot programs using the proposed computerized verification system in the five States with the highest levels of illegal immigration, as well as several less affected States."

Is the INS following that recommendation?

Mr. BACH. Mr. Chairman, there are three issues contained in that statement. First, what is immediately? Within 2 weeks of the Commission's recommendation, the administration started a task force to examine whether technically the data bases could be linked. That's the first step before you could even talk about a registry: can you link INS and SSA data bases? Those are the figures I gave you before. So we immediately responded to that recommendation.

Second of all, what is the breadth of——

Mr. SMITH. Let me follow up on that first point. How long ago was the task force set up? You said it was 2 weeks after Barbara Jordan——

Mr. BACH. It was—mid-October was the first meeting, October 1994.

Mr. SMITH. And have they reached any conclusions yet?

Mr. BACH. Yes. We met in January with the Commission staff and briefed them on some of our findings, which goes to the second point of how extensive you can be in your pilot, because we agreed with the Commission, after presenting some of our initial responses, that it would take anywhere from 5 to 7 years, conservatively estimated, before you would have a registry with all the correct computer safeguards and connections and efficiency, before you could start pilots that included that large data base. They agreed with us that the administration could not wait that long, and so we started a series of pilots, designing them to test the building blocks of what a system might consist of. Those building blocks are best tested at local levels with a small number of employers, with relatively few workers at risk, et cetera. So that is the next step.

Mr. SMITH. Does the administration's proposal for pilot programs, though, follow the recommendation of the Commission as

far as all five top immigration States and other affected areas as well?

Mr. BACH. We are targeting our pilots to learn the most.

Mr. SMITH. Yes. Well——

Mr. BACH. So it's very easy to put, for example——

Mr. SMITH. Give me an answer to my question. Are you following up on the recommendation of the Commission in having pilot programs in five States plus others or not?

Mr. BACH. It's very easy to put pilots in five States, Congressman. We could——

Mr. SMITH. OK, but are you doing it, if it's that easy?

Mr. BACH. Yes.

Mr. SMITH. OK.

Mr. BACH. So, for example, the TVS phase 1, that only had nine employers.

Mr. SMITH. Yes, my guess is that that's not what the Commission had in mind as far as pilot programs, tell me the extent of the five programs in the five States that you're talking about.

Mr. BACH. In fiscal year 1995, we are concentrating some of the TVS resources in—we're concentrating those resources in Los Angeles——

Mr. SMITH. OK, now how long—give me the extent of that pilot program in Los Angeles.

Mr. BACH. We're currently designing it—this is the one that will be 200 employers. They have to volunteer. We are out in the field recruiting them now. John Nahan got back 2 or 3 weeks ago. We're in the process of putting that pilot together. That's our immediate one for 1995.

Mr. SMITH. Right.

Mr. BACH. Our other requests are for 1996, which we await support from you and your committee before we can continue our efforts to design what it would actually look like.

Mr. SMITH. OK, and where are the other pilot programs going to be in the other five—other four States?

Mr. BACH. That's what we're—we're designing those right now. Those are requests for 1996.

Mr. SMITH. OK.

Mr. BACH. We believe we have to put them in the large States, following the Commission's recommendation and our own interests.

Mr. SMITH. So your requests include funds for pilot programs——

Mr. BACH. Yes.

Mr. SMITH [continuing]. In five States?

Mr. BACH. Yes.

Mr. SMITH. And along the lines of the one that you're proposing in Los Angeles?

Mr. BACH. That's one of the pilots, a TVS——

Mr. SMITH. Right.

Mr. BACH [continuing]. Telephone Verification System pilot.

Mr. SMITH. Right. And then there will be similar pilot programs in the other four States?

Mr. BACH. Each pilot will not be in a different State. We will cover the large major immigration areas, yes.

Mr. SMITH. Now wait a minute. I think that—each pilot will not be in the States that's recommended by the Commission; in other words, you're not going to cover the five largest States?

Mr. BACH. No, no. There's no direct correlation between—one pilot is in California.

Mr. SMITH. Right.

Mr. BACH. The second pilot is in Texas. The third pilot is in Florida.

Mr. SMITH. But there will be pilot programs in the five——

Mr. BACH. Yes.

Mr. SMITH [continuing]. Largest States? And you've requested sufficient funds in the 1996 budget to do that; is that what you're saying?

Mr. BACH. At the level that we think is a doable building block test, the funds are adequate. We would always appreciate more.

Mr. SMITH. And this is something along the lines of 200 employers in each of those five States?

Mr. BACH. For the Telephone Verification System for fiscal year 1995, expanding to 1,000 in fiscal year 1996.

Mr. SMITH. OK. You support, then, the concept of the national registry that's been proposed by the Commission on Immigration Reform?

Mr. BACH. We support the Commission on Immigration Reform's proposal to test various ways to enhance verification. If that option is their option, which is a national registry, if that's what we learn after 2 or 3 years' testing, we will move aggressively to implement because we believe we need an effective, efficient verification system.

Mr. SMITH. Yes. I'll come back with some more questions in just a minute. Let me recognize the gentleman from California, Mr. Berman.

Mr. BERMAN. First, I was—I was concerned earlier on these whole pilot projects, this whole issue of the citizen versus the legal alien, but it occurs to me that perhaps that was all determined by the 1986 law. Is it fair to say right now that the combination of documents required under the 1986 law essentially tells every employer whether the individual who is being hired is either a citizen, a naturalized citizen, or a legal resident alien?

Mr. NAHAN. Congressman Berman, the drift of your question is essentially correct. However, let me point——

Mr. BERMAN. In other words——

Mr. NAHAN. Let me point this out. The things such as a driver's license and Social Security card are being used as evidence of citizenship when we know, in fact, that they're not always issued for those purposes.

Mr. BERMAN. But are a driver's license and a Social Security card, those two cards, adequate to meet the I–9 obligation of the employer?

Mr. NAHAN. Yes.

Mr. BERMAN. Why do those two cards determine citizenship?

Mr. NAHAN. I'm saying people infer from that that—in other words, if somebody were to make a false claim, say "I'm a citizen," and then——

Mr. BERMAN. But they don't have to say what—in other words, they—the question, the ultimate test is, are they authorized to work? And I'm just wondering, is there some combination of the documents required by the employer under the obligations that the employer has under the 1986 law which determine whether the person who's claiming to be authorized to work by virtue of citizenship or legal resident alien status? And you're telling me no because you're telling me a Social Security card and a driver's license are adequate documentation and they could be consistent with citizenship by birth, citizenship by naturalization, legal resident alien status, here under color of law, or——

Mr. BACH. Congressman, the first step is the self-declaration on the I–9 form. You self-declare whether you are a citizen or a noncitizen.

Mr. BERMAN. I see. So——

Mr. BACH. Then once you start going that path, the documents then represent——

Mr. BERMAN. So we never thought it was an impermissible form of discrimination to ask, beyond the question of whether you're authorized to work, whether you are authorized to work by virtue of being a citizen or being a legal—one of the legal immigrant categories?

Mr. BACH. In our context, Congressman, the—and the Telephone Verification pilot, we never ask.

Mr. BERMAN. No, I understand.

Mr. BACH. We never check on the citizen. So, yes, we—Congress did accept the idea that the burden of proof would be on noncitizens, self-declared noncitizens. That's why the problem of false claims to citizenship is a very key element.

Mr. BERMAN. OK. Just a couple of other questions. Do you have any estimate—I guess this goes to HHS—do you have any estimate about the cost of using a Social Security—a reissued, nonforgible Social Security card as the basis for a national verification system, what that cost might be?

Mr. PRIMUS. I'll refer that to Sandy Crank of SSA.

Mr. CRANK. Depending on what features a new tamper- or counterfeit-proof card would have, it would range from a document that has a photo to those that would have a photo plus a biometric kind of thing. The cost could range——

Mr. BERMAN. What's a biometric kind of thing?

Mr. CRANK. Biometric identifications such as retinal scans, those kinds of things.

Mr. BERMAN. DNA?

[Laughter.]

Mr. CRANK. But nobody's thinking about those kinds of things.

My point is that, depending upon what features you want on this card, the cost could range anywhere from $3 to $6 billion. And why does that cost so much? It's not the cost of the card; it's the cost of the process of putting about 270 million people in the country who have Social Security cards through a process of reissuance.

You have to understand, Congressman, that many people in this country have Social Security cards that were issued based on self-declarations many years ago. We did not originally require people to establish identification, age, and citizenship or alien status when

we were first issuing Social Security cards because that was not the intent and purpose of the card. More recently, Congress has directed us to include a requirement to establish a person's identity and citizenship or alien status in issuing a Social Security card. Since that time, we have incorporated that kind of requirement in our records. So some people's records are based on that.

However, to issue a new card that would be a universal card for everybody, we probably would have to go through and reverify everybody's identity and then issue them a card. The cost of doing that is a major part of that very high cost.

Mr. BERMAN. Mr. Chairman, I know my time is up, but let me just—my very best friend lost his Social Security card about 25 years ago, but he knows the number, and when asked for it, he gives the number. Is it—because he's never bothered to ask for a new card. Is that—is there anything under the law that he's doing improperly?

Mr. CRANK. No. If he goes to work for an employer, he's probably going to be asked to show his card. If he's working for the same employer or he's self-employed, he has no need to show the card to someone. There's nothing illegal about not having a card in your possession.

Mr. BERMAN. He's been applying for a job every 2 years and no one's ever asked him to show his card.

[Laughter.]

Mr. SMITH. Thank you, Mr. Berman.

The gentleman from California, Mr. Bono.

Mr. BONO. Thank you, Mr. Chairman.

Mr. Ludwig, when you—when you do find that someone is here illegally, what's the process, the procedure afterwards?

Mr. LUDWIG. As we're going through the application process of doing eligibility and we discover that we do have an illegal alien, we automatically notify INS.

Mr. BONO. They are——

Mr. LUDWIG. They are notified.

Mr. BONO. Thank you.

Mr. LUDWIG. Yes.

Mr. BONO. Currently, Mr. Bach—Dr. Bach—what is the—with an employer now, as far as operating in good faith and filling out their paperwork and getting identification which is usually a Social Security card, is the employer penalized if he, indeed, hired someone that is here illegally?

Mr. BACH. Congressman, the law carefully says "knowingly hires" an illegal alien. So this is the fundamental problem with employer sanctions, which is the fraudulent document. So if an employer in best faith looks at a document and on the face of it, it looks fine, then the employer does not have the responsibility when they get—when they hire the person. The question is "knowingly." And then you also have to fill out the forms correctly, so that when the investigation comes, if an investigation comes, we can examine the extent to which there is a knowing violation of the law. This is——

Mr. BONO. Yes. Are you aware how complicated that paperwork is that you require the employer to fill out?

Mr. BACH. Yes, I've been a small business person, too, in the past, sir, and it's a—it's an important process, though, to——

Mr. BONO. It's very important, but let me ask you something. When you say "produce a document that they are here legally," don't—doesn't the employer fulfill their obligation? I mean, how would we possibly know? Those documents are counterfeited so beautifully; there is no way of recognizing the difference between a false document and a legal document.

Mr. BACH. Congressman, we recognize the problem, and that's why we are proposing the number of pilots and the commitment of resources.

Mr. BONO. Yes.

Mr. BACH. But I must say you'd be very surprised, if we could show you some of our investigations, at how bad the cards are when we find employers who knowingly and systematically hire illegal workers for certain types of businesses. So even though it is very possible to get through the system well, there are many employers out there who continue to hire illegal workers in a knowingly way, and we need to find them to reduce that magnet for illegal immigration.

Mr. BONO. There are many employers also that are out there who hire employees, several illegal employees, without knowing——

Mr. BACH. That's right.

Mr. BONO [continuing]. And have no way of making that determination. Then it's up to the discretion of the INS whether they decide they did it illegally or not. And I just want to submit to you it's a lousy system. It really doesn't work, and it unfairly penalizes some employers. I grant you that if some employers are illegally hiring people—go ahead. Is there a comment here?

Mr. BACH. No, this is an attorney from INS speaking over my shoulder.

Mr. BONO. Sure, I'd like to——

Mr. BACH. The idea—Christina is her name—is that this is not a discretionary issue for an employer. There is a defense for the employer.

Mr. BONO. What is that?

Mr. BACH. That they knowingly—a good-faith effort to knowingly check.

Mr. BONO. How do you determine "knowingly?" I've made some good-faith efforts to check and have been soundly——

Mr. BACH. Let me do—may I give you an example?

Mr. BONO. Yes.

Mr. BACH. Before I came into the Government, I did the evaluation for employer sanctions for the Department of Labor as an academic. All right? And I can take you to poultry firms in North Carolina, for example——

Mr. BONO. I understand there are people doing that——

Mr. BACH [continuing]. Where it is very obvious——

Mr. BONO. Yes, but what about the people who——

Mr. BACH [continuing]. Where employers have knowingly hired illegal workers.

Mr. BONO [continuing]. Don't do it knowingly that get penalized?

Mr. BACH. And that's what we want to—we want to prevent by creating a system that is very, very easy for the employer, any small business employer, to use a simple electronic system to check, and once they have checked, they are off the hook.

Mr. BONO. Mr. Chairman, is it possible to have 3 more minutes?

Mr. SMITH. Please, go ahead.

Mr. BONO. Thank you.

I just think it's important that we recognize there's small business out there. They operate by the seat of their pants, and a few dollars can mean failure or success. And for the Government to burden them and knock them out of business is a potential. I would say it's more than a potential; I would say it's an occurrence. And I just hope that you recognize that and it's not always one-sided.

Let me get to another—when you say "discrimination," what did you mean?

Mr. BACH. First of all, Congressman, in my written testimony you'll see that we have very strong concerns about small business, making it easy for people to comply. So that's in the written testimony.

Mr. BONO. Well, currently, it's very difficult.

Mr. BACH. It's very difficult, and we want to help——

Mr. BONO. I just want to——

Mr. BACH. We want to help to make it easy; you're absolutely right.

Mr. BONO. Good, because it's a nightmare right now.

Mr. BACH. Exactly. By "discrimination" is meant the unequal and unfair practice of asking one person that can be described by their appearance or by their accent for a different type or different standard of proof or behavior as opposed to someone else. That's what we mean on that employment——

Mr. BONO. OK. Is there any—is anyone at all in discrimination looking at the reverse side of that? There can be two victims in this issue. Always there's two potential victims. I have been the victim a few times.

So are you—when you bring up the discrimination—and I don't—I didn't hear it here—are you recognizing that there are two sides to this coin? And, again, look at it financially, about putting a business out of business. I don't hear any of that in your——

Mr. BACH. In our written testimony, we are committed to doing two things. One is to make, through common-sense regulations, make it possible to remove the burden of guilt from a small business person.

Mr. BONO. Yes.

Mr. BACH. OK. That's the aim of the administration.

Mr. BONO. Good.

Mr. BACH. At the same time, we want to remove the burden of proof for workers who have to come in and somehow prove that they're a citizen just because they have immigrated legally to the United States, have been raised in Chicago and still have a Polish accent, those kinds of—that we want to remove the burden of proof for both the employer——

Mr. BONO. Both sides?

Mr. BACH [continuing]. And the worker——

Mr. BONO. That's good.

Mr. BACH [continuing]. To make the process common sense and successful.

Mr. BONO. Good. That's good because that hasn't happened up until now, and I guess until we get this pilot program, it won't happen.

I just do want to go back to I hope that, as well, you will look at both sides of the discrimination issue. That, again, I submit to you, is a two-sided story. And the position of small businesses, because I work with them, is: Why us? We're just trying to—in my case, I'm trying to make a plate of pasta. Why do I have to deal with all this and why am I the bad guy? I don't want to be a bad guy. I don't want to discriminate. All I want to do is sell pasta.

So I just hope that we start recognizing that that is the other side of this. So the whole is two ways. So I do—I have a problem with us just talking about one portion of discrimination, and I would urge you to put both sides in there, so that it is fair and honest.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Bono.

The gentleman from California, Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman.

Let me pose a question—oh, first of all, let me thank each and every member of the panel for coming here today and providing testimony.

Let me ask a question, a generic question, for all the panel members. Can you give any evidence, or are you aware of specific cases, where we can demonstrate widespread abuse of any of the programs under your jurisdiction by immigrants, whether documented or undocumented? Mr. Primus.

Mr. PRIMUS. Congressman, as I stated in my testimony, I think there is ample evidence that there is not widespread abuse, basically, through the quality control systems, which take a lot of time to verify an individual case. I mean, you have a case walk in and eligibility is determined. Then we go back and very carefully look at whether the caseworker has done the eligibility procedures correctly. And in that process, we have discovered about 120 out of 55,000 cases in the quality control system where the procedures weren't followed correctly, and most of those are cases where there hasn't been the right declaration. So we think that the procedures on the benefits side, the benefit verification, ensure that very few illegal aliens are obtaining benefits.

Mr. BECERRA. In fact, in your testimony, I believe, Mr. Primus, you indicate that the quality control data, the quality check data, reveals—quality control data, excuse me—reveals that only 2/10 of 1 percent of the sample cases contained errors related to citizenship or alien status. And we can't tell if they erred on the side of receiving benefits when they weren't entitled to them or not receiving the benefits when they were entitled to them.

Mr. PRIMUS. Yes, we are going to go back and look at those 120 cases and provide a little more information, if you desire it.

Mr. BECERRA. That may be a good idea to do.

[The information follows:]

An updated review of FY 1993 quality control data indicates that there were a total of 331 sample cases that had errors related to recipient citizenship status. Out of this total——

226 cases were in error because there was no signed declaration of citizenship or alien status in the case record;

85 cases were in error because an ineligible individual was included in the assistance unit;

15 cases were in error because an eligible individual was excluded from the assistance unit; and

5 cases were in error for "other" reasons (which cannot be determined).

Mr. BECERRA. Gentlemen, anyone else have any comments on issues of abuse?

Mr. DIAZ. Congressman.

Mr. BECERRA. Mr. Diaz.

Mr. DIAZ. Because the application process is such a detailed process and it takes so long, and because there are insufficient funds to fund all of the needy individuals with regard to housing, some of our application processes require people to be on waiting lists for a number of years. In addition to that, there are not only verifications with regard to immigration status, but verifications with regard to income and other items. It is, we feel, very difficult for anyone who is an undocumented noncitizen to be able to obtain many of our benefits.

Mr. BECERRA. Thank you.

Mr. LUDWIG. I do not have the quality control statistics with me, but I do have a number for you, Congressman. States have the authority to conduct precertification investigations of the food stamp applications. Checking the statement against tax and employment records, birth and death records, school records, other sources, benefits will be denied to applicants who have misrepresented their circumstances. In fiscal year 1994, benefits were denied to 115,000 individuals as a result of this precertification.

Mr. BECERRA. A hundred and fifteen thousand out of how many?

Mr. LUDWIG. There are 27 million people on the Food Stamp Program. I'm assuming that that number is specifically for food stamps.

Mr. BECERRA. And that's how many—27 million is the number of people that are on and were eligible. That doesn't mean that that's the number that actually applied for food stamps?

Mr. LUDWIG. That's true.

Mr. BECERRA. So we have a number beyond 27 million that applied, and of that number beyond 27 million that applied, 115,000 cases were rejected for verification reasons?

Mr. LUDWIG. Correct.

Mr. BECERRA. Now—and that's, clearly, less than 1/10 of 1 percent, but of that 1/10 of 1 percent that were rejected, not all of those 1/10 of 1 percent would be attributable to an undocumented immigrant? It could be that verification of other kinds of status would deny the person eligibility for food stamps; correct?

Mr. LUDWIG. That's correct.

Mr. BECERRA. So even within that 1/10 of 1 percent of rejected cases, it's uncertain how many of those 1/10 of 1 percent actually involve individuals who are undocumented immigrants?

Mr. LUDWIG. Correct.

Mr. BECERRA. Thank you.

Anyone else?

Mr. BACH. Congressman, our SAVE system for a year receives 3.7 million queries. Roughly 1 percent, or 137,000, rounded to 140,000—and we can give you the actual figure—are considered ineligible for three reasons. One is because they have fraudulent documents. Second, they're out of status or their status has expired. So it's 1 percent. Or, I'm sorry, it's 25,000 a year, 130,000 over the course of the whole program.

Mr. BERMAN. In SAVE?

Mr. BACH. In SAVE, yes.

[The information follows:]

SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE) PROGRAM

Since 1989, the SAVE program data base received approximately 18 million queries. Of that total, INS considered an estimated 130,000, roughly 1 percent, to be ineligible based on three reasons. The three reasons are: (1) documentation presented is fraudulent or altered, (2) the non-citizen applicant is out of status or their status has expired, and (3) the non-citizen applicant's immigration status is one that the entitlement agencies have identified as ineligible for benefits.

Mr. BECERRA. Mr. Primus, let me follow up with you on some—and I know my time has expired, Mr. Chairman, so I will be quick on these last two points.

I noticed that you've mentioned in at least your written testimony, on page 14, with regard to legal immigrants and their ineligibility under the House Republican welfare reform proposal, their ineligibility for benefits under five or so different programs, AFDC, SSI, Food Stamps, Medicaid, and I believe there's one other, Food Assistance—Family Assistance Block Grant.

I wanted to correct something. You say on page 14 that, "Legal immigrants who are eligible under current law and receiving benefits would become ineligible 1 year after enactment." I thought that was the case as well under that particular proposal, but I have since learned that there were some so-called technical amendments in the bill that were inserted, without knowledge of some of us, that changed this, and no longer will people even be eligible for 1 year, for a 1-year grace period. So that the ineligibility would take effect immediately. So I wanted to correct your testimony because I want to make sure it's clear on the record that the welfare proposal that passed this House, H.R. 1214, I believe it is, does not provide any type of grace period for those who are currently receiving benefits or for those who might apply. It takes effect immediately.

And my final question, Mr. Bach, is for you, and it's actually, unfortunately, unrelated to the subject of this hearing, but I'm interested in following up with something that the INS is working on, and that's naturalization. I understand that there will be some efforts by the INS, through a grant, in areas where naturalization is a high priority to try to assist those who are applying for naturalization to get through the process, and that there will be some resources made available to help—to have outside organizations help the INS do that. I understand that that was passed in last year's appropriations bill—or excuse me—yes, the appropriations bills. And I, through communications with the INS, have been told that that would be forthcoming. I was told that last year at the end of the year and very early this year, and still haven't heard what the status is, and I was wondering if you could comment on that.

Mr. BACH. As you know, Congressman, we are deeply committed to naturalization and improving it. The $500,000 grant that you're talking about is leaving INS this week for clearance—or within the week—and moving through the administration.

Mr. BECERRA. And what does that mean, "moving through the administration?"

Mr. BACH. For acceptance for clearance.

Mr. BECERRA. And so when will we see an actual RFP hit the street?

Mr. BACH. I can't answer that. We'll get back to you with the actual timetable when we see what the initial reaction is.

Mr. BECERRA. I'd like to follow up with you on that.

Mr. BACH. Certainly.

Mr. BECERRA. Thank you.

[The information follows:]

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

DNA Advisory Board Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the DNA Advisory Board (DAB) will meet on May 17, 1995, from 11 00 am until 5 00 pm, at the General Services Administration Regional Office Building, Room 1909, Seventh and D Streets Southwest, Washington, D C. 20407. Entrance to the meeting is through the 9th and D Street entrance. All attendees will be admitted only after displaying personal identification which bears a photograph of the attendee

The DAB's objectives and scope are To develop, and if appropriate, periodically revise, recommended standards for quality assurance to the Director of the FBI, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA; To recommend standards to the Director of the FBI which specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analyses used by forensic laboratories; and, To make recommendations to the Director of the FBI for a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably

The topics discussed at this meeting include a review of Federal ethics and conflict of interest laws and the role of DAB members as special government employees, the review administrative procedures and to establish by-laws and rules of order for the conduct of DAB meetings, and to review the history of forensic DNA testing and the development of quality assurance standards now in place.

The meeting is open to the public on a first-come, first seated basis. Anyone wishing to address the DAB must notify the Designated Federal Employee (DFE) in writing at least twenty-four hours before the DAB meets. The notification must include the requestor's name, organizational affiliation, a short statement describing the topic to be addressed, and the amount of time requested. Oral statements to the DAB will be limited to five minutes and limited to subject matter directly related to the DAB's agenda, unless otherwise permitted by the Chairman.

Any member of the public may file a written statement for the record concerning the DAB and its work before or after the meeting Written statements for the record will be furnished to each DAB member for their consideration and will be included in the official minutes of a DAB meeting. Written statements must be type written on 8 xerographic weight paper, one side only, and bound only by a paper clip (not stapled). All pages must be numbered. Statements should include the Name, Organizational Affiliation, Address, and Telephone number of the author(s). Written statements for the record will be included in minutes of the meeting immediately following the receipt of the written statement, unless the statement is received within three weeks of the meeting. Under this circumstance, the written statement will be included with the minutes of the following meeting Written statements for the record should be submitted to the DFE

Inquiries may be addressed to the DFE, Mr. Milton E. Ahlerich, Assistant Director, Laboratory Division, Tenth Street Northwest, Washington, DC 20535, (202) 324–4410.

Dated April 20, 1995

Milton E. Ahlerich,

Assistant Director, Federal Bureau of Investigation

[FR Doc 95–10240 Filed 4–25–95 8 45 am]

BILLING CODE 4410–02–P

Immigration and Naturalization Service

[INS No. 1715–95]

RIN 1115–AE12

Naturalization Pilot Project; Availability of Funds; Solicitation for Proposals

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of availability of funds and solicitation for applications for a cooperative agreement.

SUMMARY: The Immigration and Naturalization Service (INS) announces the availability of up to $500,000 for a cooperative agreement to conduct a naturalization pilot project pursuant to the funding provisions of the President's Immigration Initiative, Public Law 103–317 enacted August 26, 1994. *See* H.R. Conf. Rep. 103–708, 103d Cong., 2d Sess. (1994) at 23,26.

The Office of Justice Programs will award a cooperative agreement on behalf of INS to an organization demonstrating a capacity to design and successfully implement a program enhancing public awareness of Southern California.

The INS will accept proposals from organizations with the experience, expertise and resources to prepare and disseminate information, assist in the preparation of naturalization applications, conduct or coordinate citizenship education programs and fully assist INS in the naturalization process. The INS welcomes proposals from nonprofit organizations (501(c)(3) status), such as national and local voluntary agencies, community-based organizations as well as ethnic, civic, patriotic, educational and other immigrant interest organizations

APPLICATION DUE DATE: June 5, 1995

FOR FURTHER INFORMATION CONTACT: E.B Duarte, Jr., Director, Examinations Operations Facilitation Program, Immigration and Naturalization Service, 425 I Street, NW ; room 3214, Washington, DC 20536; telephone 202/307–3587

SUPPLEMENTARY INFORMATION: The INS announces the availability of funds to conduct a naturalization pilot project in urban and rural areas of southern California. A cooperative agreement will be awarded to one organization which may function by itself or as a principal organization responsible for directing and coordinating a consortium of affiliated entities. The organization may conduct the pilot project in any one, two or all of the following INS jurisdictions The district offices of Los

Angeles and San Diego and the suboffice of Fresno.

Background

Enhancing the naturalization process for all eligible immigrants is an INS priority. The goal is to focus on lawful permanent residents who gained their status in the 1980s through the legalization program and are now becoming eligible to apply for naturalization, as well as those permanent residents who have not yet chosen to become United States citizens. The best public awareness program is the speedy, efficient delivery of a quality product. The INS will implement an enhanced program to process the additional filings resulting from awareness activities and permanent residents motivated recently to seek citizenship. A key element of the program is the naturalization pilot project.

A cooperative agreement will be awarded to a nonprofit, voluntary organization which, depending on the scope of its program, will work closely with either or both district directors at Los Angeles and San Diego and/or the officer-in-charge at Fresno and their appropriate staffs. In cooperation and consultation with the INS field offices, the organization will develop creative approaches to reach out to potential naturalization applicants from a wide range of various ethnic groups individually or en masse to complete and file their naturalization applications.

The organization will also help applicants meet their English language and civics requirements, assist the INS in the naturalization process and provide follow-up educational programs on citizenship responsibilities.

An objective of the cooperative agreement is to ensure the provision of appropriate information and assistance to eligible naturalization applicants.

Purpose

The INS intends to empower local community groups to develop a viable programmatic relationship with INS field offices to provide naturalization applicants from diverse groups with general information, technical assistance and educational opportunities to complete their applications and prepare for their naturalization interviews. To do so, the INS seeks proposals from organizations that have experience in developing creative and innovative approaches (utilizing various multi-media packages and state-of-the-art information system technologies) of screening and assisting eligible applicants in the immigration application process, and can demonstrate accessible, credible educational programs for required English and civics proficiencies.

Program Description

The pilot project is designed to develop and implement a program enhancing public awareness of naturalization in urban and rural areas of southern California. Organizations shall propose to conduct programmatic activities in the following INS jurisdictions: only the Los Angeles district, only the San Diego district, only the Fresno suboffice, or any combination of two or all three of these jurisdictions. Proposals should specify in which jurisdiction(s) the organizations will conduct the pilot project and the strategies they will pursue, and describe the level of effort they will exert in each jurisdiction. Additionally, proposals should address the following critical elements:

Part I: Targeted Population

Outreach efforts emphasizing naturalization under the cooperative agreement shall be directed to a wide-range of ethnic groups or particular classes of immigrants in urban and rural areas of the INS jurisdictions stated above in which the organization will conduct pilot project activities. Classes would include, for example: Those lawful permanent residents who obtained status through the legislation or special agricultural programs during the 1980s and are now becoming eligible to apply for citizenship; lawful permanent residents from particular ethnic groups who have not been fully motivated to apply for naturalization; and elderly applicants from diverse ethnic groups who may require special educational programs tailored to their needs. Proposals should emphasize how the organization can develop effective systems enabling applicants to electronically file their naturalization applications with the INS field office(s), and may include a discussion of how certified educational entities, if approved by the INS, would test naturalization applicants on the English and civics requirements, especially the ability to speak English words and phrases in ordinary usage.

Proposals should define the characteristics of the targeted ethnic groups or particular classes as well as the organization's qualifications to reach large segments in a credible manner through educational and public informational activities.

Part II: Pilot Project Strategies

Proposers are encouraged to develop creative approaches for providing a comprehensive program that will assist the widest possible targeted audiences. Proposals should discuss how the organization, either functioning by itself or directing and coordinating a consortium of entities, will develop strategies to implement the following activities:

A. Make eligible persons from a wide-range of ethnic groups aware of the naturalization process through general outreach projects such as the production and distribution of brochures, flyers, posters, public service and other media announcements/productions, public forums, media events, and similar activities.

1. In consultation and cooperation with the INS, the organization shall produce and disseminate the multi-media informational items to the public.

2. Any media or multi-media promotional, educational or instructional materials developed by the organization must be reviewed and approved by the INS for technical accuracy and proper emphasis prior to production.

3. All informational items disseminated shall mention INS as a source for assistance, information and action, and shall include the correct addresses of local INS office(s).

4. Upon request, the organization shall provide the INS with all print mechanicals and master tapes of video/audio media items produced under this agreement in a timely manner.

B. Assist persons individually or in groups to prepare and file complete, fully-documented, naturalization applications with local INS offices.

1. Screen applicants carefully to determine eligibility for naturalization and reduce INS adjudication time.

2. Develop creative ways of assisting applicants in group processing programs and assist INS, when necessary, in making arrangements and performing other tasks related to group processing.

3. Develop innovative ways of filing naturalization applications, making use to the fullest extent possible of state-of-the-art electronic systems, in cooperation with local INS offices.

4. Develop and maintain records of individual naturalization applicants, including those assisted to prepare and file their applications at INS offices.

C. Assure that applicants meet the English, and United States history and government knowledge requirements of the naturalization law.

1. Screen applicants to determine if they can speak, read and write English

in ordinary usage, have a general knowledge of United States history and government, or meet the statutory exemptions to these requirements.

2. Conduct English and civics classes for applicants and offer the standardized citizenship test, or refer the applicants to educational or community organizations that offer these services.

3. Encourage universities, colleges, high schools and adult education programs to offer English, United States history and government courses which could be recognized by the INS.

4. Develop and maintain accurate records tracking individual applicant's progress through the educational programs.

D. Cooperate and coordinate with INS offices in the submission of naturalization applications according to local procedures.

1. Assist, as needed, in the coordination of INS sponsored public forums, off-site adjudication of naturalization applications, and other activities related to both judicial and administrative oath ceremonies, including leasing of appropriate facilities to conduct these activities.

2. Ensure that arrangements made for oath ceremonies enhance the patriotism and dignity of such ceremonies.

E. Provide follow-up education to newly naturalized Americans on citizenship responsibilities, such as voter registration, serving on juries, community and school involvement, anticrime efforts, neighborhood improvements, and similar activities.

Proposals shall discuss how the various components of the pilot project strategies will be implemented in the INS jurisdiction(s) based on the organization's experience, expertise and resources. Discussions of campaign strategies and supporting rationale should be clear and concise, reflecting sound evidence and reasoning.

Part III: Conditions

Organizations should be aware of the following conditions affecting the pilot project strategies.

A. Representation

In order to ensure competent assistance for naturalization applicants, the organization, whether functioning alone or as a consortium of affiliated entities assisting naturalization applicants to prepare and file their applications, shall have attorneys or accredited representatives on staff or as *pro bono* volunteers who are responsible for directing, supervising or coordinating the organization's counseling and representation activities in the preparation of such applications in accordance with title 8, Code of Federal Regulations, § 292.2.

B. Prohibition on Assessing or Requesting Fees or Donations

The organization and its affiliated entities shall not request, accept, or receive any fees or donations for any activities or services described in this solicitation, and provided under the cooperative agreement, such as, but not limited to, assisting applicants to prepare and file naturalization applications, ancillary assistance such as fingerprints and photographs, and rendering educational courses.

C. Progress and Other Reports

1. The organization shall submit progress reports to the INS on a quarterly basis. Each report shall be typewritten as a narrative not exceeding ten (10) pages, and shall describe pilot project strategies developed and implemented in the INS jurisdiction(s) noted in the cooperative agreement. The narrative shall summarize the following, highlighting accomplishments, results and innovative approaches:

a. Specific outreach activities and events.

b. Statistics detailing the number of persons assisted to prepare and file their naturalization applications, particularly in group sessions, the number of persons who made an initial contact but did not apply; the numbers by category of persons whose applications were approved, denied, rescheduled, withdrawn or are pending; and the number of persons sworn in as new citizens.

c. The use of innovative application filing procedures, such as electronic systems.

d. Educational programs assisting applicants to meet the English and civics requirements: various approaches and methodologies used, and statistics by category of the number of applicants currently enrolled in programs, and of those who were previously enrolled and whether they passed, failed, or dropped out.

e. Special outreach and programmatic activities conducted with INS offices.

f. Follow-up citizenship education programs.

2. Other reasonable work-flow reports as requested.

D. The organization will provide all staff, materials, supplies, space, and equipment to provide naturalization applicants with general information, technical assistance, and educational services to complete and file their naturalization applications, prepare for their INS interviews, and learn the scope of citizenship responsibilities.

E. The INS directly and through its official representatives will monitor program activities of the organization and provide technical assistance and INS forms to the organization and its affiliated entities.

F. The INS recognizes that the organization may be engaged in a wide range of other immigration related activities, such as general immigration counseling, refugee resettlement, social services, etc. The cooperative agreement does not in any way limit the organization's performance of these services for the receipt of fees or donations. No provision of the agreement shall be construed as a prohibition against the performance of such other normal services, or other activities not directly related to the agreement. Nonetheless, the organization shall use any monies disbursed by INS under the agreement exclusively for activities and services designated as part of the naturalization pilot project.

Part IV: Program Management and Coordination

In order to insure effective implementation of the pilot project activities, proposals shall describe how the organization plans to manage and coordinate the pilot project strategies according to the following guidance:

The organization, whether functioning alone or directing and coordinating a consortium of entities, shall be primarily and exclusively responsible for the performance of all pilot project activities, including those implementing by its affiliated entities.

A. Appoint a Project Manager

1. Subject to the approval of INS, the organization shall appoint a project manager with the authority and ability to carry out the pilot project activities, and an alternate to act in the manager's absence. The organization shall notify the INS in writing at least ten (10) days in advance of any proposed changes in the persons designated for these positions.

2. The project manager shall insure that adequate numbers of trained staff are available to provide information and assist applicants in completing the naturalization process and other related activities without excessive delay.

3. The project manager and staff shall communicate regularly with local INS officials to coordinate and facilitate the naturalization process and other project activities.

4. The project manager shall respond to inquiries from the INS on matters related to the cooperative agreement

requiring immediate, follow-up or other relevant action in a timely manner.

B. Coordination of Consortium of Affiliated Entities

If functioning as a consortium, the organization, through its project manager, will coordinate and be responsible for all pilot project activities performed by its affiliated entities.

C. Establishment, Operation and Closing of Affiliated Entities

1. For the purpose of program coordination, the project manager shall provide all INS offices in the jurisdictions served with the complete names, addresses, and telephone numbers, of the persons in charge of each affiliated entity participating in the consortium, as well as the tasks to be performed by each entity in the respective jurisdiction(s)

2. The project manager shall also perform the following administrative responsibilities related to the consortium:

a. Consult with and provide the INS notification and written justification three weeks prior to the recommended phasing-in or removal of any affiliated entities. Obtain written approval from the INS prior to their inclusion in the consortium. No unilateral phase-ins will be permitted. The relationship of all affiliates will be approved by the INS. Those affiliated entities approved in the application process will have met this requirement.

b. Develop and submit for INS approval, written agreements with all affiliated entities that incorporate all applicable programmatic and budgetary provisions relating to the pilot project activities.

c. Monitor the activities of the affiliated entities and provide required assistance to assure continued efficient operation of each entity

Part V. Financial Reporting and Records Retention

A. Financial Reporting

The organization awarded the cooperative agreement is required to submit a financial status report reflecting financial information related to Federal obligations and outlays. This report is required for each active quarter on a calendar-quarterly basis. The report is due 45 days after the end of each calendar quarter. The final financial status report is due 90 days after the end of the cooperative agreement period or any extension thereof

B. Records Retention

All financial records, supporting documents, statistical records, and all other records pertinent to the awards shall be retained for at least three years from the closed audit report date for purposes of Federal examination. The retention requirement extends to books of original entry, source documents, supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records.

Part VI. Evaluation of Pilot Project Strategies

The central goal of this program is to determine which pilot program strategies are most effective, and should therefore be included in future INS naturalization outreach efforts. Therefore, it is crucial that the methods of evaluating the strategies are accurately and objectively described. The organization shall submit a full evaluation of the project's effectiveness within 60 days of the conclusion of the program.

Selection Criteria

The final selection for award of the cooperative agreement will be made by the Executive Associate Commissioner, Programs, Immigration and Naturalization Service.

Proposals will be submitted to a review panel. The INS anticipates seeking assistance from sources with specialized knowledge in naturalization and other immigration laws, and evaluating proposals, including the Community Relations Service, Office of Special Counsel for Immigration Related Unfair Employment Practices, Commission on Immigration Reform, Office of Refugee Resettlement, and Commission on Civil Rights. Each panelist will evaluate proposals for, effectiveness and efficiency, emphasizing the factors enumerated below. The panel's results are advisory in nature and not binding on the INS. Letters of support, endorsement or recommendation will not be accepted.

Organizations should be aware that the State of California is planning to fund some educational programs focusing on naturalization applicants. Unnecessary duplication of specific efforts under those programs should be avoided

To determine which organization should be awarded the cooperative agreement, the INS will consider the following (based on a 200 point scale):

A. Program Design (40 points)

Sound program design and cost effective strategies utilized to increase awareness of naturalization are imperative. In developing their proposals, organizations should demonstrate evidence of in-depth knowledge of the goals and objectives of the project; identify INS jurisdictions in which activities will be performed, and the organization's qualifications to accomplish these goals effectively; discuss a cost effective strategy to enhance public awareness of naturalization, justifying planned programmatic strategies; and outline the evaluation methods that will be used to measure the effectiveness of the pilot project, and describe their precision in indicating to what degree the program is successful.

Consequently, areas that will be closely examined in the program design include the following elements:

1. Creative and innovative outreach approaches to make eligible applicants aware of naturalization benefits. (5 points)

2. Experience and expertise in the areas necessary to screen and assist eligible persons to prepare and file fully completed naturalization applications, particularly in prompting, organizing and conducting group processing sessions. (10 points)

3. Ability to assist diverse groups of naturalization applicants in meeting the English and civics requirements through structured and special educational programs, standardized citizenship testing, or other innovative and measurable programs. (10 points)

4. Ability to cooperate with INS field office(s) in the submission of naturalization applications; and on an as needed basis, test the feasibility of filing applications electronically; assist in the coordination of INS sponsored public forums, and off-site processing of naturalization applicants, and implement various activities related to both judicial and administrative oath ceremonies. (10 points)

5. Ability to provide follow-up education to recently naturalized citizens on citizenship responsibilities, such as community and school involvement, voter registration, serving on juries, anti-crime efforts and similar civic activities. (5 points)

B. Administrative Capability (20 points)

Proposals will be rated in terms of capability of the organization to implement the programmatic activities and evaluation components

1. Evidence of proven ability to provide high quality results. (10 points)

2. Evidence that the organization can implement the campaign, and complete the evaluation component within the time lines provided. (10 points)

C. Staff Capability (20 points)

Proposals will be evaluated in terms of the degree to which:

1. The duties outlined for cooperative agreement positions appear appropriate to the work that will be conducted under the award. (10 points)

2. The qualifications of the cooperative agreement-funded positions appear to match the requirements of these positions. (10 points)

D. Previous Experience (20 points)

The proposals will be evaluated on the degree to which the organization demonstrates that it has successfully carried out programs or work similar to the overall pilot project strategies described in this notice.

E. Jurisdictional Involvement (100 points)

During evaluation the panel will closely examine the proposals that guarantee maximum exposure and implementation of the pilot project strategies in the INS jurisdiction(s). Thus, a program designed to reach a very large proportion of potential naturalization applicants in the INS district of Los Angeles would take precedence over a program in only the INS district of San Diego, or only the jurisdiction of the Fresno suboffice. In keeping with the purpose of the pilot project to reach naturalization applicants in urban and rural areas in southern California, points will be awarded to those organizations that best describe overall programmatic strategies and administrative capabilities applicable to the following jurisdictions

1. Los Angeles INS District which has the largest number of potential applicants from diverse groups. (50 points)

2. Fresno INS Suboffice which has a significantly large rural area and a large population of permanent residents who gained this status through the Special Agricultural Worker (SAW) program during legalization. (30 points)

3. San Diego INS district with significant urban and rural constituencies. (20 points)

Eligible Organizations

This competition is open to nonprofit voluntary organizations (501(c)(3) status) that customarily provide assistance with respect to immigration benefits, including naturalization.

Period and Award Amount

An award of up to $500,000 will be made to one organization.

Publication of this announcement does not require that an organization should be funded, or that the entire amount of funds available, or any part thereof, be obligated for funding. The period of performance will be from the date of the award until September 30, 1996, unless extended by mutual agreement between the awardee and the INS.

Proposal Deadline

All proposals must be received by 5 p.m. EDT, June 5, 1995, at the Naturalization Special Projects Branch, Adjudications Unit, room 3214, Immigration and Naturalization Service, Washington, DC 20536. Proposals submitted via facsimile machine will not be accepted or considered.

Proposal Requirements

Organizations should submit an original and two (2) copies of their completed proposal by the deadline established above. All submissions must contain the following items in the order listed below:

1. A completed and signed Application for Federal Assistance (Standard Form 424) and Budget Information (Standard Form 424A).

2. Department of Justice, Office of Justice Programs, Form 4061/6 (Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Work place requirements).

3. An abstract of the full proposal, not to exceed one page.

4. A program narrative of not more than twenty-five (25) double-spaced typed pages which includes the following:

a. A clear statement describing the approaches and strategies to be utilized to complete the tasks identified in the program description;

b. A clear statement of the proposed goals and objectives, including a listing of the major events, activities, products and time-tables for completion.

c. Description of how the project will be evaluated.

5. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted line item cost. If an indirect cost rate is used in the budget, then a copy of a current fully executed agreement between the applicant and the Federal Cognizant Agency must accompany the budget.

6. Copies of resumes for the professional staff proposed in the budget.

7. Detailed technical materials that support or supplement the description of the proposed effort should be included in an appendix.

In order to facilitate handling, please do not use covers, binders or tabs.

Proposal application forms may be obtained by writing or telephoning: Examinations Operations Facilitation Program, Adjudications Unit, Immigration and Naturalization Service, 425 I Street, NW., room 3214, Washington, DC 20536, telephone 202/307-3587.

Dated: April 12, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95-10270 Filed 4-25-95; 8:45 am]

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Mr. BECERRA. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Becerra.

Dr. Bach, let me follow up on my last line of questioning. We were discussing pilot programs. When do you expect the pilot programs to be complete? When would you expect to have enough information, say from the Los Angeles pilot program, to make a decision as to whether or not the verification system is working? Is it 1 year, 2 years? Just give me a time frame, if you would.

Mr. BACH. Each pilot has its separate time frame. From the fiscal year 1995 Los Angeles pilot, we should learn enough within the 1-year course of the pilot to help us with the design of the 1996 pilot. The linking of the data bases——

Mr. SMITH. Right.

Mr. BACH [continuing]. The so-called simulation, is probably a year and a half. The two-step process, which is the largest, we think that is a 3-year duration. And so we are saying and proposing, will propose, a 2- to 3-year time frame for all of our pilots.

Mr. SMITH. For all the pilot programs then?

Mr. BACH. For all the pilots, yes.

Mr. SMITH. Thank you. That's just what I was looking for.

Mr. Primus and Mr. Ludwig, both of you talked a few minutes ago about individuals who were eligible or not eligible for food stamps or AFDC. It's my understanding that if someone comes and requests either of those benefits and says that they are a citizen, that no further check is made; it's a self-attestation process; is that correct?

Mr. PRIMUS. Usually, some additional information is required, I mean, a birth certificate, baptismal records, some proof of citizenship besides just saying, "I am a U.S. citizen." And this is not to say, Mr. Chairman, that there are not times when someone who declares himself to be a citizen——

Mr. SMITH. Right.

Mr. PRIMUS [continuing]. Produces a birth certificate that could be a fraudulent document.

Mr. SMITH. Right.

Mr. PRIMUS. But, as I indicated in my testimony, you need to have a valid Social Security number that matches a fraudulent birth certificate, and through these other matches, we think we would check that. I mean, if there is any loophole in the current system—and I don't want to imply that there aren't some people that fraudulently obtain benefits——

Mr. SMITH. Right.

Mr. PRIMUS [continuing]. But if there is a loophole in the current system, it relates to the current decentralized system of keeping and reporting birth and death records.

Mr. SMITH. Right. My point is that if someone were willing to use fraudulent documents, they could obtain, wrongfully obtain, benefits to which they were not entitled; is that correct? Mr. Ludwig, is that correct for you as well?

Mr. LUDWIG. The process that's used by the programs under Mr. Primus is very similar to ours. In fact, in many of the States the same eligibility worker does the same process for both of them. We do require another piece of documentation, driver's license, pass-

ports, birth certificates, but you're correct as far as the fraudulent producing of those documents.

Mr. SMITH. OK, thank you.

Dr. Bach, let me go back to you, if I may. It's my understanding that there is a provision in IRCA that prohibits the use of a verification data base for law enforcement purposes. It's my understanding that this runs counter to what I and the administration would like, which is to use a verification system to help detect illegal aliens who are wrongfully obtaining benefits. Would you recommend changing that provision in IRCA or is my assumption correct that the administration would like to detect individuals who are wrongfully obtaining benefits?

Mr. BACH. The administration would very much like to detect, detain, and deport illegal immigrants. We believe access to the workplace and public benefits should be closed off. There's a good reason, we believe, that there was a firewall put in the original SAVE system to protect the use of the information. One is the confidentiality/privacy issue that Congressman Berman raised, and we wholeheartedly support that concern. In addition, as we understand it, part of the Congress' concern back then was producing a chilling effect on authorized people coming to use public benefits. We are concerned about that chilling effect on U.S. citizens and legal immigrants. So if we can balance those two concerns, protecting children and people's access, when they are authorized to use the system, with our commitment to finding illegal immigrants and preventing them from using the systems, we will do that. That is what we're trying to do, balance those two concerns. And so if that takes a change in the IRCA statute, yes, then we will be proposing that.

Mr. SMITH. OK, thank you. That was the answer I was looking for.

The next question is, I know that INS uses the alien identification number. You've heard a lot of testimony today about using a Social Security number. How are we going to conform those two and come up with one number that everyone can use? And you know the problems with computers and everything else.

Mr. BACH. That's right. Historically, when INS went to the alien number, the use of the Social Security number wasn't anywhere close to what's current. So we've developed parallel systems that are now a problem. The figures I gave you before were startling to us, that the Social Security numbers that we do have in our system for basically the legalized population, for only about 10 percent of our records do we have both the alien number and the Social Security number now. Eighty-five percent of those matched to the Social Security Administration Social Security number. That's a wonderful——

Mr. SMITH. So we're 85 percent of the way there?

Mr. BACH. No, we're 85 percent reliable in the numbers we have.

Mr. SMITH. OK.

Mr. BACH. We only have 10 percent of the numbers.

Mr. SMITH. I see. So how are we going to get 100 percent of 100 percent?

Mr. BACH. Congressman, the administration is seeking authority in its legislation to allow INS to collect Social Security numbers on all our customers.

Mr. SMITH. So you see that as a possible solution, then——

Mr. BACH. Yes.

Mr. SMITH [continuing]. To try to merge the two?

Mr. BACH. From time forward now, we want to be collecting Social Security numbers and using it as the basic record.

Mr. SMITH. Right. My last question is, as you read in the papers, as I have, the Social Security Administration has in the past been providing the INS with Social Security numbers of individuals who are not eligible to work, and the INS has not been making use of those numbers or that information. Has that been fixed in the last several weeks or is there still a problem?

Mr. BACH. There's quite a bit of information that comes to the Immigration Service on the illegal immigrants that we cannot use in an effective enforcement way. We are working on how to respond to that information. We do not have a fix yet.

Mr. SMITH. OK. What's your deadline or when do you expect it to be fixed?

Mr. BACH. We'll have—I'll have to get back to you on that, sir.

Mr. SMITH. OK, thank you.

[The information follows:]

In 1982, SSA began giving INS tapes with names and Social Security numbers (SSNs) of aliens for whom employers reported wages to SSA but where the SSN card had been issued as "not valid for employment." The tapes listed employer, but did not give addresses or any other information on either the employers or employees.

INS accessed these data in 1982 and 1983 to try to use the, but was unable to find a way to use the information.

> The tapes were cumulative and there was no way to determine how recent the information was. In many cases, the aliens listed could have left the country or adjusted to lawful status, but there was no reliable way of determining this.
>
> INS has not found it to be an efficient use of investigative resources to target enforcement action against individual workers when the information is not very recent.

Nevertheless, INS always hoped to find a way to use aggregate information from these tapes. After IRCA passed we hoped to use the tapes to target employers where several employees with wages posted to nonwork SSNs were working.

Last year, as part of ongoing discussions between INS and SSA, both agencies agreed that the information was not useful as currently configured, and as a result in August 1994, SSA stopped sending the tapes to INS. However, INS and SSA have continued to explore how information which would be of use to both agencies could be shared within existing privacy and confidentiality requirements. We are also continuing to explore uses for current information on earnings posted to nonwork Social Security numbers.

Mr. SMITH. The gentleman from California, Mr. Berman, is recognized.

Mr. BERMAN. Yes, I want to understand what this 1/10 or 2/10 of 1 percent figure means. Is this the number of people who are checked through the SAVE Program to determine eligibility for certain kinds of Federal categorical aid benefits that are found to be applying even though they're out of status? Is that what that is?

Mr. PRIMUS. I think Dr. Bach and I have used similar statistics meaning different things. The very small percentage I was referring to is in the AFDC quality control system, where the caseworker is reviewed—I mean, it's an intensive day-long review where basically a supervisor comes in and looks at a random sam-

ple of the cases and says whether all the procedures to determine eligibility were followed. And in those cases, is there a birth certificate; was there a declaration of U.S. citizenship; was everything followed correctly? In that quality control system, I said 120 out of 55,000 cases involved cases where the procedures were not followed correctly in ascertaining citizenship or alien status. That was the——

Mr. BERMAN. A hundred and twenty out of——

Mr. PRIMUS. Fifty-five thousand.

Mr. BERMAN [continuing]. The 55,000 are part of this quality control thing, and all you found was that in 150 cases they didn't check properly?

Mr. PRIMUS. That's right. And then I said——

Mr. BERMAN. Does that speak to the issue of whether, in fact, they were qualified to receive benefits based on the status, not on other things? I'm not interested on whether they had enough money or——

Mr. PRIMUS. I think, Mr. Congressman, it puts an outer bound on how many illegal aliens would actually be applying for benefits. I said we'd go back and look at the 120 because some of them may actually have been U.S. citizens; they just didn't have the piece of paper or the declaration in the file when the quality control worker verified. So it's an outer bound.

Mr. BERMAN. Is the quality control worker a county worker?

Mr. PRIMUS. Yes, it's a—well, county, in your case, California, but a State worker in most cases.

Mr. BERMAN. A cynic could say that the more people that that person found to have the eligibility not correctly checked could be costing—that in other words, there could be a Federal failure to reimburse Federal share for that finding. I mean, the motivation to find a lot is probably not there in some ways.

Mr. PRIMUS. Congress mandated that we put a lot of effort into the quality control system. It's a very intensive review, and there's a Federal review of these State cases.

Mr. BERMAN. So you're checking what they're doing; right?

Mr. PRIMUS. That's right.

Mr. BERMAN. OK. We talked earlier—Mr. Crank mentioned sort of a ballpark $3 to $6 billion cost for the implementation of a counterfeit-proof new social—picture Social Security card; is that a fair summary, Mr. Crank, of what you said?

Mr. CRANK. Yes.

Mr. BERMAN. What about the time frame for that kind of implementation of that kind of system? And I do want to note that the effort of INS to implement a new green card has demonstrated—let's put it this way: they put off the deadline for another year last week just because of the incredible difficulty of last-minute rushes, people coming in. I mean, it's not their fault; it's an enormous process.

Mr. CRANK. Again, depending upon the features that would be incorporated in the card and the process that we would use, we would say the time could range anywhere from 2 years to 5 years.

Getting over 200 million people some place to go through that identification process would certainly exceed the capacity of the Social Security Administration. We have not done the kind of analysis

that answers the question of who could do it and how long would it take? But, clearly, it would be beyond our capacity to do and we would have to look at what help could we get through contractors or——

Mr. BERMAN. In California we've had a lot of good experience giving it to gasoline stations—or through cars.

Mr. CRANK. Motor vehicle departments could be another source of helping with that kind of activity, but, again, it would involve their resources and their capacity, and we haven't really staffed all of that out.

Mr. BERMAN. Mr. Chairman, could I ask one more?

Mr. SMITH. Please, let me mention to you that we're coming back for another round of questions. At least I have some more questions, if you'd like to resume in a minute—or go on and proceed now. It sounds like you have a time problem.

Mr. BERMAN. Yes. The good news is I probably won't be able to be around for the third round of questions. Thank you very much.

In SAVE, when that process is used—and that's used for certain benefit programs; right? In fact, SAVE is not used for employment. It's just used for benefit programs.

Mr. PRIMUS. Right.

Mr. BERMAN. When that process is used and the bell goes off and says that that person does not appear to be here in legal status, they are not denied benefits by virtue of that finding, right? There is then a process of secondary verification that takes place?

Mr. PRIMUS. My understanding of the system is that if the initial automated match is negative, then, we go through a paper process to determine whether the initial information that was received was, indeed, accurate, and go into the——

Mr. BERMAN. How many of that—I thought that the ultimate decision was left at the local level to that secondary verification process? In other words——

Mr. PRIMUS. That's right. It's done under a wide variety of methods, depending upon the local office. And, as I stated in my testimony, we received 3.8 million AFDC applications. Of those, the States reported that 5,300 were denied because the applicant or some other member was undocumented.

Mr. BERMAN. How many, 3——

Mr. PRIMUS. Five thousand three hundred. This is in the AFDC world now.

Mr. BERMAN. I know. Let's just talk AFDC world for a second. Five thousand denied out of how many using——

Mr. PRIMUS. Out of 3.8 million applications.

Mr. BERMAN. But how many—but that's how many were denied after secondary verification; right?

Mr. PRIMUS. That's my understanding, yes.

Mr. BERMAN. How much of that was denied—what was the denial figure or what was the bell-ringing figure that said you'd better go do secondary verification because we cannot establish, based on what you gave us, that that person's here legally?

Mr. PRIMUS. I don't think we have those numbers. We don't have the number of matches established through primary verification.

Mr. BERMAN. You don't have a figure on how many times the computer said——

Mr. PRIMUS. I could probably supply it for the record.

Mr. BERMAN. Oh, OK.

Mr. PRIMUS. I don't have it here today.

Mr. BERMAN. Oh, all right. OK. Sure.

[The information follows:]

The INS maintains all data related to the number of queries made by benefit programs to the SAVE system, and the number of primary and secondary verifications. In some states, each benefit program requires a separate application and the programs query the SAVE system separately. For these states, there were 336,664 queries in FY 1994 by AFDC agencies, with 62,374 (or 19 percent) requiring secondary referral. In other states, an applicant can apply for AFDC, Food Stamps, and Medicaid with a single application. In these states, there were 936,500 queries in FY 1994 on behalf of AFDC, Food Stamp, and Medicaid agencies with 134,984 (or 14 percent) requiring secondary referral.

Mr. BERMAN. All right, one last one, and this will be real short.

Mr. SMITH. The gentleman continues to be recognized.

Mr. BERMAN. Do you need—I appreciate this—do you need authorization from us to do any of the pilot programs that you're talking about or could you do all of them without authorization?

Mr. BACH. We can do them without authorization. We think they're extremely important. So we're putting them in legislation to mark their importance. There are some authorities that we need in order to go beyond, like the authority to collect Social Security numbers.

Mr. BERMAN. Oh, INS needs statutory authority to be able to collect Social Security——

Mr. BACH. To require collection of a Social Security number, yes.

Mr. BERMAN. In other words, for you——

Mr. BACH. They could volunteer—an immigrant could voluntarily give us their Social Security number. We could not require them to give us the Social Security number. We're asking that kind of authority in our proposed legislation.

Mr. BERMAN. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Berman.

The gentleman from California, Mr. Bono, is recognized.

Mr. BONO. Yes. Thank you, Mr. Chairman.

Mr. Primus, did I understand you to say that, to verify legitimacy, you look at baptismal records?

Mr. PRIMUS. Yes. I mean, we go through—obviously, the birth certificate is the first document, but if that document doesn't exist, we go through other—to other documents that would establish U.S. citizenship.

Mr. BONO. I don't know how baptismal would establish illegitimate or legitimate as far as—it's not significant as far as legality of being here, for being in a State.

Mr. PRIMUS. Again, if you have an 85-year-old applying for SSI benefits and they can't produce a birth certificate because they were born in 1910, we don't arbitrarily deny that individual SSI benefits just because they can't produce a birth certificate. If they have other documents that clarify that that individual is, indeed, a U.S. citizen, we use those documents rather than saying that person is not eligible.

Mr. BONO. OK, thank you. Just as long as we don't get down to baseball cards.

[Laughter.]

Mr. BONO. Mr. Bach, I just want to revisit the paperwork as far as an employer is concerned. If an employer in good will makes a mistake, is he penalized, in good faith?

Mr. BACH. In good faith, no. We often examine—we often examine errors in the paperwork when we investigate.

Mr. BONO. OK, she's going to tell you something [referring to a member of Mr. Bach's staff].

[Laughter.]

Mr. BACH. That's always good, to listen to your attorney.

[Laughter.]

Mr. BACH. The issue is, first, the good faith and knowingly. If you then—if there's a mistake on the form when we investigate, we could, in principle, under the law hold them accountable. What we do is we work with them to correct that paperwork mistake, and then—so you'll see we even report it differently between an initial compliance and a subsequent compliance, after we have helped the employer correct the paperwork.

Mr. BONO. OK. I want to submit to you that that's not always the case. And if someone in good faith does make a mistake, they can, indeed, be penalized, and sometimes are. You know, I—OK, here we go.

Mr. BACH. We're agreeing. We're agreeing, Congressman.

Mr. BONO. What's that?

Mr. BACH. We're agreeing.

Mr. BONO. You are agreeing?

Mr. BACH. It can happen.

Mr. BONO. Yes, and I think that—you know, I think that's a bad system. And if we're going to sit around and wait for a pilot program and it goes—California is in a recession, almost a depression, and every business is vital to California. And so every time we place a burden on a small business, which is the backbone of our businesses there, we have a potential of impacting our economy more there. And I don't think there's an equity here as far as penalizing small businesses for in good faith making a mistake in a very complicated paperwork.

And let me just give you a picture. You have to understand that when you own a business, a small business, sometimes you'll have a manager that is transient and you'll hire a new manager, and to hat them up or process them in all procedures is very difficult and it takes a lot of time for that process. They do make mistakes. Some of the mistakes they make are when they fill out hiring forms.

So how long do you think it will be before the small businessman is alleviated of that kind of pressure?

Mr. BACH. Congressman, our whole approach, frankly, is to make it easier for business people to comply. That's——

Mr. BONO. How long would that be? I mean—I mean, what do we think we're looking at as far as that burden getting off of their back?

Mr. BACH. Well, frankly, Congressman, we all—California also has an illegal immigration problem, as you well know.

Mr. BONO. Yes.

Mr. BACH. And so we believe that this is a correct balance, that in order to keep pressure on deterring illegal immigration, we have

to hold employers responsible for knowingly hiring illegal immigrants. There will be a group, the group that you are very concerned about, that I'm very concerned about, of small business people who will be caught in that. We believe in working with the employer to help resolve that conflict.

Mr. BONO. I really have a difficult time accepting that as a policy. I think you're shuttling a government responsibility onto a businessman. I mean, if we hadn't passed the law here, really if someone's in a country legally, you would assume that they're there legally. You have a problem, but I think it's been pushed onto the businessman on an unfair basis.

Right now, I can only ask that you recognize the difference between a chicken farm and a small restaurant and be aware that—I doubt if any business, any of the small businesses in California want to do anything to perpetuate the illegal immigrant problem.

Thank you. That's all the questions I have.

Mr. SMITH. Thank you, Mr. Bono.

Dr. Bach, one more quick question for you: we've heard testimony from HHS and Department of Agriculture that when they have an indication that an individual is ineligible to receive benefits, they pass the name of that individual onto the INS. What do you do with those names?

Mr. BACH. We're now collecting those names that are being delivered from a variety of sources. Our intention is to use them for investigative purposes, subject to our determination of where best to put resources. As you know, we put our resources at the places where the biggest problems are, El Paso, San Diego——

Mr. SMITH. Is that to say that none of these individuals have been investigated or some have and some have not, and what percentage have?

Mr. BACH. We routinely turn them over—I don't know the percentage for you, sir, but we do collect the information. We receive it and we pass it back to the investigation of people at the local level.

Mr. SMITH. I realize you may not know the answer now, but would you get back to the committee and let me know the number of names that are passed on to you for further investigation and how many are investigated and the outcome of those investigations?

Mr. BACH. Absolutely, sir.

Mr. SMITH. OK. Thank you.

[The information follows:]

The INS District offices respond to leads received from various sources depending on the quality of the lead and resources available. The INS national database does not identify the individual or entity referring the case. During FY 1994, INS field investigations Offices apprehended 61,897 aliens and completed investigations on: 46,236 Criminal Alien cases; 7,616 Employer Sanctions cases; and, 5,888 Fraud related cases.

Mr. PRIMUS. Mr. Chairman, can I——

Mr. SMITH. Yes, Mr. Primus.

Mr. PRIMUS [continuing]. Add to that? I want to clarify for the record that under law we cannot use SAVE for enforcement purposes. So I don't believe I was quoted as saying we pass those names over to INS, because the law says we may not. And I know

there has been legislation introduced to change those requirements——

Mr. SMITH. That was the law that Dr. Bach and I, I think, were——

Mr. PRIMUS. Right.

Mr. SMITH [continuing]. Discussing a few minutes ago.

Mr. PRIMUS. Can I add to that——

Mr. SMITH. Sure.

Mr. PRIMUS [continuing]. Because I think this is a sensitive area, and I'm not going to contradict——

Mr. SMITH. Let me just clarify that. Mr. Ludwig, then it's only the Department of Agriculture and food stamps?

Mr. LUDWIG. The Food Stamp Act itself requires them to report it to INS.

Mr. SMITH. OK, but you don't have a like requirement in HHS?

Mr. PRIMUS. We have a requirement under the Social Security Act, I believe, that says we may not use——

Mr. SMITH. There's a conflict between the two? That's interesting. OK.

Excuse me. Please go on.

Mr. PRIMUS. I mean, Dr. Bach indicated that, you know, there are situations where it's our policy to deport illegal aliens, but there are cases where this deportation goal comes into conflict with other goals that the administration and you would probably consider also very important, the welfare of our children. We have mixed households where the children are citizens of the United States——

Mr. SMITH. Right.

Mr. PRIMUS [continuing]. But the mother of the household is illegal, and this situation—and I think we're willing to work with the committee, but it requires Solomon-like decisions where these—if the illegal alien parent is apprehended and expelled, there's a potential that the child, then, would become a ward of the State since the child itself is protected from any deportation or expulsion proceedings. And I think that's a case we have to keep in mind when we consider changing this requirement.

Mr. SMITH. I appreciate that. I am surprised to hear that different departments have different regulations regarding what they should do with the names of the individuals who are——

Mr. LUDWIG. Let me see if I can even go on with another——

Mr. SMITH. Sure.

Mr. LUDWIG [continuing]. Additional explanation of that.

Mr. SMITH. Yes.

Mr. LUDWIG. The SAVE system does not tell us that someone's in the United States illegally.

Mr. SMITH. I understand that.

Mr. LUDWIG. So he's speaking of the SAVE system. The SAVE system, the same thing would apply to us because we cannot verify through SAVE that they're here illegally, but through all of our checks, if we find that they're here illegally, the Food Stamp Act requires us to turn them over to—or submit that name to INS.

Mr. SMITH. I understand. Thanks for the clarification.

Mr. Diaz, let me address some questions to you. It's my understanding that HUD, which you represent, and HHS both are gov-

erned by the same regulations that concern Immigration. HHS requires a person who says that they are a citizen to provide some sort of documentation in support of that claim before they are given benefits. HUD, it's my understanding, does not require any document showing that an individual is a citizen. Why is that? Why do you not require documentation as does HHS?

Mr. DIAZ. To give you the development with regard to how we process the applications, when an individual comes into a public housing authority to apply for housing, they have a set of requirements which relate to not only their name, but verifications of income and residencies and other issues. When a person then becomes eligible for housing there is—under IRCA, the public housing authorities are required that the employers then be given additional notification since we already are involved in verifying employment activities; there's also a prerequisite check already given by the employer. So even though we may not be requiring documentation, when we verify employment, that assumes that there is already some verification process that has been developed.

In addition to that, we then require under the subsection (b) of section 214 that the person submit a declaration in writing, signed under penalty of perjury, which is a criminal statute, 42 U.S.C. 1436, relating to the person's eligibility. Now if the person indicates that that person is an immigrant, then there are requirements that are necessary——

Mr. SMITH. Right, I understand that. My point was, though, that you rely solely on the affidavit, someone saying that they are swearing to be a citizen, and you don't require any more documentation, whereas HHS says you have to provide further documents, and I was wondering why the——

Mr. DIAZ. Under the statute, you are correct, but not under the process because the process specifies that documentation requirements are necessary to be used in the development of qualifications for housing in the first place.

Mr. SMITH. So you feel that they've already been screened. Have they already had to produce those documents showing citizenship prior to coming to you, then; is that what you're saying?

Mr. DIAZ. Well, I have to say, again, under the application process, it's a tedious, long process in which a lot of information is required. In addition to that, then section 214 requires that we use the self-verification process. It's by law. The law requires us to use the self-verification process. We could not ask any other information based upon section 214, as you have prescribed in the 1986 act, IRCA. So we are following the law, Congressman.

Mr. SMITH. OK, thank you. Wait one second.

OK, let me explain to you what I think is going on here. We have two votes going on right now. I'm going to have the committee stand in recess. It will probably be until—why don't we say until 12:30?

Let me further say, and apologize to the last panel, that I've had a longstanding commitment for many weeks to speak to a large immigration organization and give a lunchtime speech. I've already missed lunch; I'm hoping not to miss my own speech.

[Laughter.]

Mr. SMITH. And so I will not be returning, but there will be a Member here to take testimony. And regardless of how many Members are present, the testimony is just as official, will be scrutinized just as closely. And so I appreciate the third panel staying with us and for their patience.

In regard to the panel now present, thank you all for your testimony. We appreciate your being here as well.

We will stand in recess until 12:30.

[Recess.]

Mr. BRYANT of Tennessee [presiding]. We will reconvene this hearing and begin with our third panel of the day.

Let me welcome each of you to our hearing this afternoon. I apologize that we might be a little late reconvening, but we've been at various meetings and votes today. But let me welcome again all of you.

And if we could begin—I understand each one of you has an opening statement—if you could just summarize that for us in the fashion you choose, and we'll begin with Mr. Velde.

STATEMENT OF RICHARD W. VELDE, ATTORNEY AT LAW, WASHINGTON, DC

Mr. VELDE. Thank you, Mr. Chairman. It's an honor to be here. I do have a lengthy statement. I would ask that it be submitted for the record.

To summarize briefly, from the perspective of one who's labored in the vineyard of exchange of criminal history and identification information over 30 years and have been involved in the drafting and enactment of much legislation, at the present time we are facing the worst of both worlds. Modern technology is being used to counterfeit identification documents and manipulate our identification and related data bases. This imaging technology is just now beginning to be used to improve the quality of data bases, documents and the exchange of the information. However, but we have a very long way to go, particularly, in the context of illegal immigration.

I gave testimony before the House Government Reform Committee, 3 weeks ago on essentially the same topic, on the integrity of identification documents. This same testimony could be repeated before the Crime Subcommittee in the context of the implementation of the Brady bill, before the Ways and Means and Finance Committees in the context of fraud on the Internal Revenue Service, before the Agriculture Committees in the context of fraud on food stamp and other agricultural benefits, and so on.

The problems that we face in the context of immigration, and particularly employer sanctions, are common with many, many other governmental entitlement and benefit programs and identification programs. They are also common with problems of private credit card fraud.

In 1968, Congress passed the Gun Control Act, which made it a Federal felony offense for individuals to fraudulently obtain firearms. Eight categories of persons were barred from buying guns: convicted felons, illegal aliens, underage persons, and so on.

In 1986, Congress passed the Immigration Reform Act. Section 101 of that act prohibited unauthorized persons, misdocumented,

undocumented persons from living, working, or enjoying other benefits of our country.

In that same year, as part of the antidrug legislation, Congress passed title 12, the Commercial Motor Vehicle Safety Act of 1986. That legislation created national uniform standards for testing and licensing of commercial truckdrivers. It required biometric identification to be loaded on the truckdriver's license by 1991. It's taken about 10 years for full implementation of that legislation, but today there are 5 million truckdrivers who have licenses that meet uniform national standards. They have fingerprint, photograph, and signature information loaded on the card. I have samples here which include these biometric identifiers. Each one, photograph, signature, fingerprint, can be used to establish positively or verify identity.

In 13 States before driver's licenses are issued, they verify the Social Security number that is used as the identifier on that driver's license. Thirty-six States now use the Social Security number as the identifier.

In the 1986 immigration legislation, INS was mandated and directed to work with the States to upgrade State identification documents. I have here—and I'll submit for the record—a pilot project dated December 15, 1988, in which the Social Security Administration submitted a report to the Congress on a telephone system for employers to use to verify identity. We're still talking pilot projects all these years later. The time has long since passed to move from pilot project into a full-fledged identity and verification system.

We face exactly the same problems with implementation of the Brady Act. You could look at the military identification documents, 4 million of them issued, which also use the Social Security number as the identifier. Talk to the military about their experience in using Social Security number as an identifier. Entire families use the same number; unrelated persons, the same number, and so on. We could be having the same conversation with respect to the passport.

What is needed, is that vital records must be upgraded, identified positively, linked to the driver's license, and then interfaced with key Federal identification systems as well.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Velde follows:]

PREPARED STATEMENT OF RICHARD W. VELDE, ATTORNEY AT LAW, WASHINGTON, DC

Mr. Chairman and members of the Subcommittee: Existing federal, state and local identification systems have been subjected to massive fraudulent manipulation over the years. This has resulted in tens of billions of losses in various federal and state entitlement and benefit programs, as well as condoning and facilitating the presence of millions of "out of status" individuals. Many of these individuals have been a major drain on our institutions of government and taxpayers.

Although great strides have been made in the development and automation of criminal identification and information systems in the past twenty five years, much more must be done to build an integrated system that can fully take advantage of new technology. Comprehensive federal legislation is needed to allow the interstate exchange of criminal history information, but safeguards with appropriate criminal and civil sanctions must be put in place to ensure the integrity of the various data bases and to protect the privacy of individuals who are the subjects of these data bases.

Existing federal law for the exchange of personal identifier information between federal, state and local authorities must be reviewed and a new comprehensive, con-

sistent federal law enacted to enable fully the exchange of identifier information. Current law is a hodgepodge of often conflicting and technologically obsolete provisions which do not protect the privacy of affected individuals and which fall short of the standards set in the Federal False Identification Act of 1982 and Section 609(L) of the Crime Control Act of 1984.

Emergency legislation is needed to deal with endemic problems of massive fraud involving employer sanctions under the Immigration Reform Act of 1986, The Brady Handgun Violence Prevention Act of 1993, the National Child Protection Act of 1993, and The National Voter Registration Act of 1994, to cite just a few of applicable federal laws which require verification of identity.

All these federal laws plus thousands of state laws and local ordinances have common characteristics:

Convicted Felons, underage individuals and illegal aliens cannot buy guns. Many convicted felons and illegal aliens cannot work in child care. Most—not all—convicted felons cannot vote. Non-citizens may not vote, nor can underage persons. Out-of-status persons may not live, work nor vote in the United States.

Similar prohibitions apply to various federal entitlement and benefit programs such a food stamps, education, medical and welfare.

Similar prohibitions apply in the thousands of state and local programs.

Yet all suffer from a common failing. All lack the ability to identify positively those who are lawfully entitled to benefit from the laws; All lack the ability to identify positively those who are to be denied the benefits of the laws.

This failure is costing us tens of billions; it robs us of job opportunities; it affects our elections; it results in increased violent crime and drug trafficking; it places heavy burdens on health care, education and housing. It contributes to passport and border crossing fraud, compromise of military identification systems and it is a massive drain on the social security system, as well as massive fraud on the IRS.

Our private financial and credit card industries also suffer major losses from identification fraud. All too often, they have relied on easily counterfeited or altered documents to extend credit or to provide goods and services.

Can we continue to afford this crazy quilt of conflicting and ineffective identification legislation? Just examine the congressional debate last year on health care fraud and look at the calls for a national health card. Just examine the debate on the House floor last week on welfare reform or the recent debate on food stamps and the $2–3 billion annual losses in that one program alone. Just look at the hearing records of the House Ways & Means Committee and the Senate Finance Committee over the years on fraud on the IRS. We all pay for that—but why?

The technology and the legal precedents are at hand—if only we look at the problem of identification documents in a systematic fashion and develop comprehensive legislation to regulate the interstate exchange of criminal history information. Comprehensive legislation is also needed to provide uniform national standards for identification documents. Congress has provided for uniform national standards and positive identification for commercial drivers and private pilots and aircraft owners. Why not for all drivers and others who need state identification cards?

With due respect for the Jordan Commission, there is no need for a separate national immigration data base of persons lawfully entitled to live and work in the United States to be accessed by employers under the 1986 Immigration Act.

The Commission has made a thorough investigation of the problems of document fraud and deserves high praise for its attention to this Achilles heel of the employer sanctions provisions of the 1986 Immigration Reform legislation.

However, Section 101 of the 1986 Immigration Act focuses on the problem of document fraud and authorizes INS to work with state DMVs to improve the driver's license. It is laudable that INS now has a pilot program in this area—it is laughable that it has taken this long.

This information can be shared with state Motor Vehicle Departments prior to issuance of drivers licenses—on line and in real time. The Immigration Service has at least four mandates from Congress in 1986, 1988, 1990 and 1994 to share its data bases on illegal and criminal illegal aliens with state criminal justice agencies for enforcement of federal and state criminal laws. Why not make the same information available to DMVs?

These persons should not be allowed to drive as well. They should not be able to buy or make phoney IDs and other documents to rip us off and rob and steal and traffic in illicit drugs.

Then employers could begin to rely on drivers licenses as a means of positive identification for job applicants. There would be little if any need for the other 28 documents authorized by the INS for applicants to present to the employer. This amazing array makes it virtually impossible for the responsible employer to comprehend and sort out and make an informed judgement that the person applying is the per-

son indicated on the supporting documentation. Why not concentrate on the drivers license?

Exchange of Criminal History Information

In 1969 my former agency, LEAA, sponsored a demonstration effort in which a group of six state criminal identification groups came together to form a consortium called Project Search. It was charged with the task of developing a standard format for the criminal history record, or rap sheet, and then demonstrating the interstate exchange of background information. At the same time, task forces were formed to examine the questions of protection of privacy of individuals who were the subjects of the records and to ensure the security of the computer systems.

Today, some 25 years later, the consortium has become a non-profit organization that includes all 50 states and federal representatives. Model state laws were formulated and are now in place in all the states, although they are far from uniform. Most repositories are automated, although millions of files are still to be converted.

In 1973 Congress authorized LEAA to issue regulations to govern the interstate exchange of the records. This was to be an interim provision to be replaced by more comprehensive legislation. In 1976, as Administrator, I issued the regulations. They are still in effect today and seem to be working reasonably well. But they are only as good as the underlying law, and do not contain a statement of national policy and priorities that should govern the exchange of rap sheet information.

In 1979, the FBI was authorized to begin a pilot project for "Triple I", the Interstate Identification Network, as part of its National Crime Information Center, for the on-line exchange of rap sheet information utilizing a "pointer" or summary system first developed in 1970 by Search Group.

Brady Gun Purchaser Background Checks

In 1988, this authority was made permanent by the McCollum-Dole amendment on that year's crime bill, which authorized the FBI and Triple I to establish a national instant system for checking the bona tides of prospective gun buyers. This provision was incorporated into the 1993 Brady Act and the states were given five years to set up the instant system. Meanwhile a national five day waiting period was instituted in those states what were not in compliance.

Today, 26 states have their own instant systems or longer waiting periods or state licensing laws. Another nine states must come into compliance before the five day waiting period is sunsetted.

The Brady Act places an affirmative mandate on chief law enforcement officers of local jurisdictions to perform background checks. In five states, led by Virginia, the state police perform the checks for dealers who are "on line" in dial up networks.

Under the 1968 Gun Control Act, eight categories of persons are prohibited from buying firearms, including convicted felons, illegal aliens and persons under 21 for a handgun and 18 for a long gun.

Unfortunately, the Brady check is a "name" check only, except for gun dealers, who must submit fingerprint cards. The name check is only as good as the driver's license or "commercial" identification presented by the would be gun buyer. Without a physical or biometric verification of identity, as is contemplated in Section 609(L) of the Crime Control Act of 1984, the Brady check is only as good as the paper that is presented to the dealer. The dealer should be able to determine if the drivers license is valid—that is not counterfeit, altered or expired and that the person standing there is the person to whom the license is issued.

As a general rule, state and federal (FBI) criminal history repositories do not charge for law enforcement requests for rap sheet information. However, for non-law enforcement inquiries such as employment checks various charges are made which range from a few to as much as $30. Non-law enforcement uses criminal information systems now exceed law enforcement checks. Brady checks fall somewhere in between.

"Progun" organizations generally favor the instant check and want to see it upgraded to be more reliable and accurate. "Antigun" groups want the waiting period retained, but also support upgrade of the instant system. Congress has appropriated $100 million for implementing Brady, on top of $27 million of earmarked "Byrne" formula grants made available pursuant to the 1988 instant check legislation.

The Brady money is being used for a general program of record conversion, not just those (conviction or disposition) records that are directly relevant for compliance with the Gun Control Act requirements.

The INS should make its data bases available for Brady Act checks. Brady checks can be used by employers to determine employment eligibility just as gun dealers use the "network" through local chiefs of police (CLEOs).

The Social Security Administration should make SSN data available for these purposes as well.

A supercomputer network with five thousand terminals on line to DMVs or criminal justice agencies or employment agencies could easily handle the workload of a national employment check system. It would have a capacity with today's state of the art of supercomputer technology of handling all terminals at the same time and processing inquiries at a rate of sixty billion calculations (MFLOPS) per second.

Similar networks are already in place in the U.S. Government. This would be incredible overkill, but easily affordable and could be supported by "user fees." Or it could be linked through Internet, as is now being demonstrated by a pilot project involving the entire State of Iowa, and several cities.

The network could be decentralized or "distributed" with identifier data bases maintained at the state or local DMV installations and exchanged through NCIC, NLETS, or NDR (the National Drivers Registry of bad drivers maintained by NHSTA for background checks on commercial drivers). This network is funded at about $2 million per year (excluding state costs).

Motor Voter and Child Protection Legislation

Last year Congress enacted national motor voter legislation which mandated the states to amend voting laws for federal elections so that persons who have valid drivers licenses would automatically be entitled to vote. This legislation was enacted over vigorous protests that it would lead to widespread vote fraud.

Unless Congress repeals or drastically amends this legislation, at the very least states should be required to bring drivers license requirements into conformity with commercial drivers license standards. As with Brady checks, before a license is issued or renewed after the effective date of the federal legislation, background checks should be made to determine voting eligibility.

Who can't vote? Most convicted felons, noncitizens and underage children. Who can't buy guns? The same groups. Again, the DMVs should be able to access relevant federal and state data bases to determine voter eligibility. This eligibility information should be annotated on the drivers license, in much the same way that the social security card now states whether the bearer is entitled to work.

The National Child Protection Act of 1993 requires criminal history background checks for those working the child care professions. This includes millions of workers such as teachers, day care workers and volunteers for organizations serving young people. As is the case with motor voters, who cannot work in child care? Most convicted felons, and of course, illegal aliens cannot work anywhere, including child care. Employers should have access—it need not be more than indirect—to relevant data bases for these checks.

Fraud on the IRS

More than 100 million tax returns will be filed this year, with about 10 million filed electronically. This is down from 13.5 million filed last year. According to the March 6, issue of Government Computer News, the IRS intends to run electronic matching programs on SSNs on all returns. Special fraud checks are being performed on the electronic returns, especially those applying for early refunds. 3 million such returns have been held up with the prime target being the earned income tax credit (EITC).

IRS estimates that the fraud this year in this area alone might approach $5 billion.

A suit against the IRS seeking an injunction to stop the hold up was filed last week by a financial company that had many loans against the anticipated quick refunds. Documents relating to this suit will be made available to the Subcommittee for its use.

It is highly likely that many thousands of illegals have filed fraudulent claims involving the EITC, in which non-existing dependents, or those residing in foreign countries have been utilized in attempting to qualify for the EITC.

The IRS is also for the first time checking on all SSNs cited in returns and running some checks on EINs as well. The problem here is compounded, however, by the fact that these are "name checks" and not physical or biometric checks based on objective identifier information, as was discussed above in relation to the Beady checks.

Again, state of the art technology must be brought to bear to upgrade electronic checks of identifier information so that a physical or biometric verification of identity can be made by IRS.

The state art in imaging and compression technology will make these physical checks in the very near future. For example, preliminary discussions have been held

with respect to compressing and loading an entire state's DMV data base onto a single CD ROM disc. Then at point of contact or interaction, a live comparison can be made of the information contained in the drivers license against the CD data file and against the live "eyeball" comparison of the person standing at the counter. Search Group and the FBI have also developed fingerprint coding techniques that can serve similar verification functions by comparing fingerprint images.

Signature verification techniques can be employed such as measuring the pressure and time required to sign one's name. This can be compared against a live signature "read."

These are just three of the techniques that might be employed to upgrade name or number checks of a person's identity. I am quite confident that others will be developed in the coming months which will also make verification possible. Great strides have been made in DNA sequencing technology. In the near future, sequencing will be in real time. This will make possible the generation of a unique identifying number—15 or 50 or a 1,000 number long on each individual. It will not be intrusive. All that will be needed is a sample of hair or skin flake or spit to perform the identification. There will be no need for identification documents we know them today. And yet identification will be positive and ultimately reliable.

This subcommittee has recently received testimony on enforcement activities on the Mexican border. The technology which I have described above is highly relevant for document checks for identity verification at checkpoints. The faces in the crowd" technology should be utilized to scan incoming vehicles and their occupants to determine their bona tides. AFIS technology is not appropriate nor efficient in monitoring sixteen lanes of vehicular traffic, as is the case at the San Isidro checkpoint nor the I–5 checkpoint at San Clemente.

Further, and most importantly INS benefit applications are still overwhelmingly mail order transactions. They are only as valid as the paper submitted by way of documentation to support them—which is to say the door is open for massive fraud. My information is that up to 80% of the benefits granted under the SAW and Raw programs were based on fraudulent documentation.

The INS requires fingerprint cards to be submitted by an applicant for many benefits—more than one million per year. They are then forwarded to the FBI for background checks. But whose fingerprints are submitted? The INS assumes that the fingerprints submitted are those of the applicant—but are they? There is no linkage of positive verification of identity to the person applying for the benefit.

This subcommittee has received testimony from the AAMVA which restates the obvious: the state drivers license or ID card is already the defacto national ID card. It is legally acceptable to establish or verify identity for all sorts of federal, state and local, public and private purposes. Twenty-six states are digitizing their identifier data bases, with more to follow in the coming months. The drivers license uses the SSN as the identifying in at least two-thirds of the states. Thirteen states verify SSNs with the SSA prior to issuance or renewal.

Why not all states under a federal mandate? Congress has already done so for commercial drivers in 1986. This requirement for truck drivers is a condition precedent for receipt of highway trust funds by the states. Congress should also impose uniform national standards for all drivers licenses and require background checks with SSA and INS.

There should also be national uniform national standards for birth certificates—as this subcommittee has already received testimony on behalf of state vital record organizations.

In 1976 a Justice Department survey on false documentation found that there were more than 4,000 public and private institutions issuing more than 7,000 different birth certificates. It is absolutely incredible, but that is still the case today.

Thirteen states are still "open record" states where anyone can obtain anyone else's birth certificate for any purpose. The birth certificates should be biometrically loaded at time of issuance—many now contain the baby's footprints—most do not. With the advances in DNA sequencing technology referred to above it is or soon will be technically feasible and cost effective to annotate birth certificates with DNA identification information. A number of states including Virginia either have or have authorized DNA data bases for felons.

The birth certificate should also be annotated with the SSN either at birth or later. An SSN is required by the IRS for all taxpayer dependent claims after age five. The birth certificate should also be updated with fingerprints and photographs digitally loaded—at least by the time that person applies for a state drivers license or passport.

This recommendation is consistant with testimony you have already received from the state vital record directors who have called for uniform national standards.

Otherwise our whole national identification systems are not worth the paper on which they are printed—whether it be counterfeit resistant paper or not. Faulty breeder documents such as the current birth certificate only build a house of false ID cards. And we all pay the price. We are the only major nation in the world that allows this ludicrous folly to continue.

Congress and the Executive must provide leadership and courage to solve this mess we are in. Our country now faces the worst of both worlds. Modern electronic and computer technology is being used by the unscrupulous to compromise our identification systems—to copy and counterfeit and duplicate.

Yet we are not using the technology now at hand to upgrade our data bases and identity documents nor protect the privacy of our citizens. The undocumented and misdocumented still rip us off and mock our institutions and otherwise beat the system. When will we wake up and join most other advanced societies and stop this criminality? I submit, Mr. Chairman, we are long overdue.

I deeply appreciate the opportunity to testify before the subcommittee. I will submit for the record the documentation and citations for the legislation I have referred to in my testimony.

Mr. BRYANT of Tennessee. Thank you, Mr. Velde.

Mr. Fragomen.

STATEMENT OF AUSTIN T. FRAGOMEN, JR., ESQ., CHAIRMAN OF THE BOARD, AMERICAN COUNCIL ON INTERNATIONAL PERSONNEL

Mr. FRAGOMEN. Thank you, Mr. Chairman.

I appear in my capacity as chairman of the board of the American Council on International Personnel. Our 250-member organization represents multinational companies interested in the flow of skilled personnel.

The Immigration Reform and Control Act was of particular interest to our members who are among the largest employers in the United States. ACIP was the only business organization which did not oppose employer sanctions. Frankly, our members do not like employer mandates, but we accept the necessity of employer sanctions as a key element in controlling illegal migration. However, we were assured that border enforcement would be made effective; the verification process would be simple.

Employer sanctions is not working. Levels of illegal migration remain high. INS enforcement overemphasizes paperwork violations, not keeping undocumented workers out of the work force. Border enforcement and entry control are woefully inadequate. Fraudulent documents are readily available. Conscientious employers are totally frustrated by the inability to assure hiring a legal work force. The process is too complicated to be properly administered, even by a sophisticated employer, and the current system can create discrimination based on alienage.

Perhaps even more significantly, the failure of INS to control the flow of illegal migrants has undermined public confidence in the entire U.S. immigration system. While I know the members of this subcommittee understand the positive contribution of highly-skilled, employment-based immigration and antialien sentiment can affect even legal migration, upon which our member companies depend as they globalize their work force, if sanctions are to continue, they must be made effective. ACIP believes this can only be accomplished through a secure identity card tied to an easily accessible verification data system.

I appreciate the problems in designing and implementing a fully effective system. The card ideally would have to contain an identi-

fier such as a fingerprint, iris image, et cetera. The data base would have to include both Social Security Administration and INS information, which would have to be cleansed.

But, Mr. Chairman, I suggest that while we debate the nuances of the perfect system, we too readily overlook the fact that the basis of this system that would be 90 percent effective already exists. The Social Security system already has a data base for aliens and citizens. The Social Security Administration has been screening aliens for work authorization status for the last 7 or 8 years. This could serve as the primary data base for verifying employment eligibility. Aliens would need to obtain a Social Security card which could only be secured by first obtaining an appropriate authorization document from the INS.

We appreciate the Social Security data base needs to be upgraded, but this could take place over a period of time while implementation of the verification program is phased in. Social Security could initially issue new cards with photographs or other unique identifiers. New cards could be phased in for all Social Security cardholders over a period of time. Meanwhile, INS could upgrade its data base to deal with the alien population. Ultimately, Social Security would verify INS documentation.

On an interim basis, until full implementation, employers would continue to use an expanded TVS system, the Telephone Verification System, for persons with alien registration cards. Of course, this should be expanded to all employment authorization documents issued by the INS.

Since Social Security has already been screening applicants for immigration status for a number of years, it would seem that this would make sense as the most readily available data base. Employer compliance would be simple. The burden of proving—the burden of providing the data to verify employment eligibility would be placed on the Government, where it properly belongs. The incentive for alien discrimination would be eliminated.

We have carefully reviewed the recommendations of the Commission. We complement Barbara Jordan and the other members for providing such a thoughtful and comprehensive document. And although we endorse the basic recommendation of the Commission, we believe that delaying implementation of a universal verification system effectively delays full implementation of employer sanctions.

The current system does not work because of lack of a centralized data base. Until the system is universal, employer sanctions will have a negligible effect in keeping undocumented workers out of the workplace. And until a meaningful system is in place, INS should concentrate its resources on border and entry control and deemphasize workplace enforcement.

In conclusion, I would just like to make three related observations. Entry control is the linchpin to controlling illegal migration, not interior enforcement. Secondly, we need to thoroughly examine the question of whether undocumented workers provide a needed labor which cannot be provided domestically. And, thirdly, we need to significantly impact the vast underground economy from a law enforcement perspective since millions of workers, including undocumented, are totally outside the system.

[The prepared statement of Mr. Fragomen follows:]

PREPARED STATEMENT OF AUSTIN T. FRAGOMEN, JR., ESQ., CHAIRMAN OF THE BOARD, AMERICAN COUNCIL ON INTERNATIONAL PERSONNEL

Mr. Chairman and Members of the Subcommittee, I am Austin Fragomen, and appear in my capacity as Chairman of the Board of the American Council on International Personnel, or ACIP. Our 250 member organization represents multinational companies interested in the international flow of skilled personnel. Over the past 16 years, we have also been intimately involved in the development and implementation of the employer sanctions law, more commonly known as Simpson-Mazzoli. I appreciate the opportunity to appear before you today to discuss that law and, in particular, the recommendations of the Commission on Immigration Reform relating to it.

During the debate on the Immigration Reform and Control Act of 1986 (IRCA), ACIP was in the somewhat unusual position of being the only major business organization which did not oppose employer sanctions. Frankly, our members, like all businesses, were not thrilled with the idea of another employer mandate, especially one that could lead to large fines and even prison sentences in the extreme case. Yet we accepted the necessity of sanctions as an element of controlling illegal immigration, along with tough border enforcement. We were also promised that the employment verification process would be simple.

As I have testified before this Subcommittee on previous occasions, ACIP has been sorely disappointed in the directions employer sanctions has gone over its initial nine years. It has failed by many measures:

The absolute levels of illegal immigrants continue to be high, reportedly now at levels approximating those at the time IRCA passed, in the 3 to 4 million range.

The failure of INS to control the flow of illegal immigrants has undermined public confidence in the entire U.S. immigration system, thereby posing a threat not only to illegal immigrants, but also leading some to question the value of legal immigrants. While I know Members of this Subcommittee understand full well the positive contribution highly skilled employer based immigrants make to our economy, other Members may be hearing from their constituents that even legal immigration has to be reduced substantially because of the problems in controlling our borders. Such reductions would be a major blow to U.S. employers competing in the global marketplace.

INS enforcement has focused on paperwork violations, not punishing those who knowingly hire illegals. Various reports to this Subcommittee demonstrate one major reason—the absence of resources devoted by INS to the employer sanctions enforcement effort. With such few resources, all that INS can do is go for the easy attack, namely finding flaws in the I–9's and fining the employers. ACIP members, most of them with thousands, tens of thousands, or even hundreds of thousands of I–9's on file are particularly susceptible to paperwork fines. For no matter how careful a company is, I can guarantee you that a percentage of the I–9's will be wrong.

Border enforcement has remained weak. No one ever believed that sanctions could be the entire solution, yet border enforcement has only begun to increase. We hope that INS increases its border enforcement dramatically, especially with the additional funds provided by Congress, so that our companies can feel they are in the effort together with the government to control illegal immigration. It is important to note that border enforcement means not just stopping illegal entries, but also controlling more effectively legal entries with subsequent overstays. An on-line computerized system of entries and departures is imperative as a basic monitoring device. Most visa abusers make multiple entries. An effective tracking system might not prevent their initial entry, but it will prevent subsequent entries.

No good deed goes unpunished. The existing system puts the most conscientious employers in a terrible position, in many ways a worse position than before IRCA was enacted. A careful employer will complete every I–9 for every new hire, and ask the new employee to present one document from List A or one from List B and one from List C. Because of the overdocumentation provision of the law, the employer cannot ask for more than that, and cannot specify which documents are to be presented without facing possible discrimination charges. The employer, especially in some industries in some parts of the country, may have a very strong feeling that a substantial percentage of the documents presented are fraudulent, but that employer cannot press the employee for more documentation and cannot even check with the INS about the validity

of the documents presented, because of a court case settlement in 1988. The only exception was for companies in the pilot telephone verification system (TVS). So the employer dutifully completes the I–9's, having a very strong suspicion that some proportion of the workers are unauthorized. In due course, INS visits the employer and verifies through its own checking what the employer suspected—many of the employees presented fraudulent documents. Of course, the employees are not arrested or deported, but the employer is forced to terminate the employees. Then the employer hires replacement workers, who, of course, also present fraudulent documents, and the cycle starts anew. These INS investigative visits and repeated workforce turnover create considerable disruption for the employer's business operations. Because INS tends to enforce the law through targeting an industry in one geographical area, what they create is a form of musical chairs for workers who, when they get terminated, circulate to another employer. One difference from musical chairs, though, is that almost every worker ends up with a seat in this game.

The process is ridiculously complicated. The current system has even large employers pulling their hair out. It is a nightmare for small employers. Nine years after enactment, INS and the Office of Special Counsel still do not agree on many issues, though they are both part of the Department of Justice. While INS's heart is in the right place trying to simplify the current I–9 process, the changes INS proposed in its initial rule in the fall of 1993 were so minor as to not be worth the bother. For all the flaws in the current system, at least our members have trained their employees how to deal with it. To make minor changes now, such as eliminating the Merchant Mariners card from the list of identification documents as INS proposes, will only create more confusion for employers. Our advice to INS has been, either fix the problem fundamentally, or do not fix it at all. Tinkering only makes life worse for employers.

The system does not eliminate discrimination. With few exceptions, our members do not discriminate, at least in the classic sense of the word. There are so many other federal, state, and local laws on the books to which they are susceptible if they discriminate that they spend enormous resources trying to prevent classical discrimination. Yet they may discriminate under the technical definition of the immigration law by treating some job applications differently than others in the I–9 process. No matter how many times people are taught the rules—such as the prohibition against asking for specific documents or for too many documents—they still get violated. It is human nature to ask for specific documents if you think a person may not be work authorized.

With these flaws, what is the solution? A solution which has been proposed by many, and which we do not support, is eliminating sanctions. Those who advocate such a position are advocating, in essence, open borders. ACIP believes that controlling the flow of aliens into the U.S. is a reasonable public policy goal, and should be pursued.

So if sanctions are to continue, they must be effective. ACIP believes, as has virtually everyone who has examined the issue, that unless there is a secure identification card or number, tied to an easily accessible verification data system, the flaws in the current system will persist and even expand. When I say everyone agrees on this, I exclude those who oppose the entire concept of employer sanctions, for not only do they oppose sanctions, they also oppose a meaningful verification system. While I do not question the sincerity of their beliefs, it is no accident that those who oppose sanctions also oppose meaningful reform.

Every day, tens of millions of Americans makes tens of millions of transactions with their credit cards. Those of us old enough to remember know that when this credit card based system first started, it was based on trust—the merchant had to trust the customer. Then, as abuses grew, the credit card companies began issuing lists of valid credit card numbers. I can remember standing in line impatiently as the clerk flipped through the cumbersome book checking for my number. This system cut down on abuses, but merchants and customers got frustrated because of the time involved in the checking. Finally, over the past few years, virtually every merchant who accepts credit cards, and most do, whatever the size, has gone to an on line telephone verification system keyed to the code embedded in the credit card.

Are there problems in that system? Certainly there are some, and I encourage this Subcommittee to talk to those credit card companies to learn about their problems. Fraud occasionally does occur. Sometimes cards get improperly rejected. Sometimes the telephone verification system technology is slow or breaks down altogether. But in the larger scheme or things, the system works extraordinarily well.

I see no reason the same system cannot be used for our employment system for all employees in this country. And if the government has to contract out the system to Visa, MasterCard, American Express, Diners Club, Discover, or one of the other

credit card companies to get it done quickly and properly, then that is what should be done. Keep in mind the scale of new hires every day or even every year is dwarfed by the volume of transactions on credit cards. If they can do it, why can't the government?

Let's look at the objections. Cost. I frankly do not know the cost. But given the technology and databases already available, I do not believe it should be extraordinary. Social security already has a database for all citizens and those aliens who are legally working. Admittedly, there may be a few undocumented aliens who have obtained legitimate social security numbers, but that is a minute part of the work force and has never been identified by any experts as a major problem. INS has a database for all aliens, but that database does not need to be part of the employment verification system. Even aliens authorized to work need social security numbers. The technology for accessing the database exists—credit card companies, merchants, and customers are used to it by now. To the extent there are flaws in the system, they can easily be dealt with. For instance, occasionally a valid credit card registers invalid or over the credit limit when presented to a merchant. A simple telephone call normally solves the problem. The same can be true with a worker identification card.

I also contend that the cost of implementing such a system is minuscule compared to the cost of continuing the job magnet in the U.S, some of the costs of which were documented last year by the Urban Institute. And it is minuscule compared to the cost of a system that is so flawed that illegal aliens thumb their noses at the INS on the front page of a national newspaper, as occurred in an issue of last fall's New York Times.

The second complaint is that it will be discriminatory. That is the must ludicrous of all arguments. What is discriminatory about the credit card system? Every merchant requires every purchaser to present a credit card when making a purchase, and then validates that purchase. That is true whether the person is citizen or alien, fourteenth generation or a new arrival. The one change to employer sanctions which will remove any possibility of any employer treating employees differently is a work authorization card. Everyone concerned about possible discrimination in the workplace arising from employer sanctions ought to embrace the worker verification system ACIP advocates.

Certainly the issuance of credit cards is not universal, but for those who have them, the treatment is nondiscriminatory. Because everyone employed in our workforce is required to have a social security number, everyone legally authorized to work is entitled to the card and number which will prove they are work eligible.

The argument that a work identification card will turn into some type of internal passport is not credible. With all the data held by the governments at all levels on each of us, and all the data held by people in the private sector about each of us, we are already exposed to tremendous privacy concerns. But we deal with them. Access is limited to medical records, credit reports, and other information. Cards which are issued are limited in their use. Every driver is required to have a drivers license to drive, but that does not give the police or any authority the right to stop you on the street and ask for your drivers license if you are not driving. Similarly, a work identification card can be limited in its use to work identification.

In sum, ACIP believes it is clear that the goals of verifying employment eligibility, restricting access to the database on which the employment eligibility system is based, and restricting the use of the card presented for employment eligibility can all be met without threatening any citizen's or alien's privacy or rights.

The simplicity of the system is its greatest beauty. Every employee knows the rules. Obtain a work identification card from the government, most likely a secure social security card. If we want to have a separate card for aliens authorized to work, such as a green card and some type of employment authorization document that is fine, though I do not see why the entire system cannot be keyed to one identification number.

Every employer also knows the rules. Either the employee presents the card, and is eligible to work after it has been verified, or does not present a verifiable card, and is not eligible to work. If the prospective employee insists he or she is eligible to work though the card produces a negative response, then there can be an 800 number the employee and employer can call to pursue the matter, just as a credit card customer can talk to the credit card company if the payment authorization does not go through. We recognize the system I have outlined may need some refinements, but the basic principles are straightforward. Various alternative strategies can be examined. But I do not believe that this issue is one of those cases in which the devil is in the details.

Such a system is not foolproof. No system is. But we already know that when the INS checks the work authorization of employees, they usually can find out quickly

whether presented documents are authentic and establish employment eligibility. Most unauthorized workers readily admit they are illegal when confronted with information. The system ACIP is advocating, if implemented, would have the vast majority of illegals confronted prior to hiring, which is the object of the exercise.

Most importantly, the system ACIP is advocating puts the burden for verifying employment eligibility where it should be, namely on the federal government. All that the employer would have to do is conduct the administrative check of validating the employment eligibility document back through the government maintained database. Again, the credit card analogy is instructive. When a merchant accepts your credit card in exchange for services or merchandise, the merchant is not personally commenting on your creditworthiness. The credit card company makes that decision in issuing you the card. All that the merchant is doing in the transaction is verifying that the card presented is valid for transactions. Similarly, for employer sanctions, the employer should not be expected to try to determine an employee's employment eligibility. All that the employer should have to do is verify that the document presented is acceptable to the government.

I realize the Commission on Immigration Reform in its report last fall was not yet willing to take the dramatic leap of introducing a full-blown card and verification system. We are a country which likes to make changes incrementally, and I can appreciate the concerns of the Commissioners about moving too precipitously in this area. We reluctantly endorse the Commission recommendations. Our reluctance is predicated only on their unwillingness to recommend moving to a card and telephone verification system immediately across the country. We share the Commission's opinion that President Clinton already has sufficient statutory authority to implement the pilot program, and hope that it will begin as soon as possible.

We also hope that the Social Security Administration will stop being what appears to us as a major obstacle to implementing the verification system. A social security card with a picture identifier would be a good start toward a good employment verification system, especially if there were an additional unique identifier associated with the card such as a signature or the mother's maiden name. Not everyone has to be issued a new card at the same time. It will have to be phased in gradually. As technology improves, the cards can become more sophisticated over time. What we object to is the perfect becoming the enemy of the good. Too many people are arguing that because we cannot have a perfect, universal system immediately, we should remain paralyzed.

I remind the Commission and this Committee, however, that by delaying full implementation of the type of system ACIP advocates we are also effectively delaying full implementation of employer sanctions. Let's be clear about this. The current system does not work because of the fundamental problem with the employment verification system. It needs an essential part changed radically. Without that change, the flaws I and so many others have outlined will not disappear. I would go so far as to suggest that until a truly effective employment verification system is in place, INS stop workplace enforcement and redeploy all of its personnel to border enforcement.

I want to make comment on the Telephone Verification System (TVS) Pilot program that INS has operated in cooperation with a very limited number employers and its relationship to what ACIP advocates. I commend INS for the TVS pilot. It appears to have worked reasonably well, according to the reports I have seen. But let us not be confused about what TVS did and can do. It only applied to a minute portion of the workforce, namely, aliens with permanent resident cards who chose to present those cards at the time of hire. It only validated for the employer the particular cards presented, namely, the so called "green card." It had little to do with simplifying the employment verification process or verifying the employment eligibility of the tens of millions of other new hires who do not have or who did not choose to present a permanent resident card for I–9 purposes. It only tied into a very limited data base, namely, that of INS. Even if INS expands the number of employers to hundreds or thousands, it will still achieve little.

The key data base is not that of INS, but of social security. What employers need and what the country needs is a fast, simple way of determining the employment eligibility of all new hires, not just those few who are permanent residents who decide to present a permanent resident card. To take my credit card analogy a step further, using TVS as a method for simplifying the employment verification process and reducing illegal immigrants in the workforce is like one of the credit card companies announcing that only individuals from a certain zip code have to have their credit cards validated by merchants. Such a system might reduce fraud perpetrated by the few people who live in that zip code, but it does nothing to protect employers against possible fraud by the vast majority of credit card users.

The good and not very surprising news from the INS report on the TVS pilot is that employers found a "point-of-sale" type employment verification system easy to use. That information is further confirmation that the social security card based system ACIP is advocating would be welcomed by the employer community.

In conclusion, Mr. Chairman, I want to make three observations about where employer sanctions fits into our economy in a more fundamental way. First, border enforcement is essential as part of an overall control strategy. Secondly, there is a large demand for undocumented aliens in many parts of our labor market. If we truly want to keep them out of the labor market, can we realistically expect to fill all those positions with legal workers? I suggest not, at least under our current immigration system. Instead, we must look much more seriously at regulating the flow of necessary, and I emphasize the word necessary, workers, especially in many entry level positions. When the bracero program was ended in this country in the early 1960's, it had been widely discredited. I have no doubt the program had enormous problems. But those workers did not stop coming just because people in Washington wiped it off the books. Those agricultural workers just started coming illegally. They went from a situation in which arguably they had inadequate labor protections, but labor protections nonetheless, to a situation in which they had no labor protections. I am not suggesting returning to the bracero program, but I do suggest we take a long, hard, and, to the extent possible, nonideological look at a carefully regulated program for workers in lower end occupations. And my final point is that because of the huge undocumented population that the current system engenders, we are also encouraging the growth of the cash economy. This underground economy is unfair to the workers, to the competitors of those employers who hire employees on the books, and to the national treasury which loses access to needed tax dollars.

Thank you for allowing ACIP to be represented here today. I look forward to working with you and the Committee on this important issue.

Mr. BRYANT of Tennessee. Thank you.

Mr. Antolin.

STATEMENT OF JOSEPH A. ANTOLIN, DEPUTY DIRECTOR, ILLINOIS DEPARTMENT OF PUBLIC AID

Mr. ANTOLIN. Thank you, Mr. Chairman. Members of the committee, thank you for having me testify.

My name is Joseph Antolin. I'm deputy director of the Illinois Department of Public Aid. That department administers statewide the AFDC Program, State supplemental payments for SSI, the Food Stamp Program, refugee assistance, State general assistance, the jobs program, Medicaid, and a raft of other programs.

We serve more than 1.4 million residents of Illinois each month. That, broken down, means about one out of every eight residents in the State. Over half of those clients are children. One of every three births in the State is paid for by Medicaid. That background, I think, is relevant to some of the issues which are different, I think, than have been presented.

We have an automated intake system for benefit eligibility in Illinois. Ours is the fifth largest in terms of immigration population, the fifth largest in terms of IRCA legalized aliens, the fifth largest population of legal refugees, over 90,000 since 1975. All of the numbers that detail this are in my written testimony upon which I will rely, rather than going through them in detail.

Nearly half of the need from legal aliens, and in some cases undocumented, tend to be related to medical, either emergency needs or prenatal needs, and there are public health issues that have to be considered when determining who's eligible for what services and what verification you're going to require.

But I will address in the normal eligibility process of determining someone eligible for food stamps, for Medicaid, for AFDC, that we do. When that person comes on an intake, we ask them if they are

applying for benefits and ask them if they are a citizen. If they say they are a citizen, we'll go through the normal series of verifications that have been testified to before, primarily a cross-match with Social Security on the number that is given to us, and the presumption is that the Social Security Administration has gotten the birth certificate of that particular adult. We will check the birth certificate and other data for each of the children in the assistance unit. If Social Security says it's not a good number, the person is then denied benefits.

For those who say they are aliens, we use the SAVE process. We have an electronic link with INS SAVE system. It is very effective when it works. Ninety percent of our, we estimate, 60,000 verification requests have been verified. Another close to 9,000 have required secondary verification. Our quality control, review of these files, suggested that about 108 cases have been paid benefits erroneously when there is bad documentation or insufficient documentation gotten but, some of those documentation or insufficient documentation is of citizens.

So we do not see alien fraud as a very large problem. We think the hole, if you will, in the verification system is those who purport to be citizens and have a Social Security number that checks out as being a valid number. There is no other verification, absent any kind of identifier. There is not much more we can be doing to verify that this person is a citizen, since someone with a Hispanic accent or background or a Polish accent or any number of other is as likely as not a citizen, and could have been born in our country in the communities that we have and be a citizen; thus if they have a valid Social Security number, that's what we rely on.

SAVE also does not resolve a vexing problem for public benefits that does not exist for employment verification, and that is the alien, documented or undocumented, parent who may be ineligible for benefits, but is also the parent of citizen children who are eligible for benefits. What we have done in our State is we ask those parents to identify who is applying for benefits. If it is only an application for the citizen children, we will still consider the parents' income; we will verify those things that will determine eligibility in terms of financial factors, assets, and income being the primary ones, but we will not pursue verification of the particular individual who is not applying. And that is consistent with a Federal court order interpreting the food stamp provision that was referred to this morning by Mr. Ludwig.

There are some problems with the SAVE system. One is that INS still has not corrected some data gaps. Very old data tends to be incomplete or not verifiable. There are delays in getting new data into the system. There is not a way to verify naturalized citizen. The document and statuses for secondary verification are far too complicated and ought to be simplified and streamlined into fewer forms, fewer categories. It would make it a lot easier for everyone and be much more cost-effective.

The SAVE secondary verification processing time, it's our experience, can take up to 6 months. That's too long because we will probably be paying benefits during that period of time.

And then, finally, we've had about 300 cases, in our experience, of individuals who have lost their documents, and have not gotten

the replacements from INS. It represents a problem in terms of establishing verification. Somehow whatever new system is developed has to accommodate those situations.

There has to be addressing of the public health risk issues for aliens who need prenatal care because the child is going to be a U.S. citizen when born. Denying benefits in that situation is detrimental to that forthcoming U.S. citizen and represents a health risk that may not be acceptable in terms of the other costs that we may have with a child who doesn't get the prenatal care and the proper delivery services.

I'd be happy to answer any questions you have.

[The prepared statement of Mr. Antolin follows:]

PREPARED STATEMENT OF JOSEPH A. ANTOLIN, DEPUTY DIRECTOR, ILLINOIS DEPARTMENT OF PUBLIC AID

Good morning, my name is Joseph A. Antolin and I am the Deputy Director of the Illinois Department of Public Aid.

The Illinois Department of Public Aid (hereafter "IDPA") is the agency responsible for the administration of welfare programs including AFDC, SSI State Supplemental Payments, Refugee Assistance, State General Assistance, Food Stamps, the JOBS Program, Medicaid, the Child Support Program, Title XX Block Grant program, and many other programs and demonstration initiatives. Within the IDPA, I am responsible for the statewide field operations including most client services such as eligibility determinations, benefit redeterminations the development and implementation of all employment and training programs, the administration of the IV–D child support program, and the planning and implementation of welfare reform initiatives and demonstrations.

The IDPA serves more than 1.4 million clients each month. One (1) in every 8 Illinois residents is eligible for some type of assistance; either cash, medical or food stamps. Over half of these clients are children. To serve them, the state of Illinois will spend more than $6 billion this fiscal year to provide medical care, cash assistance, emergency shelter and child support enforcement among a host of other services. The IDPA budget accounts for 22 percent of the Illinois state budget.

In March 1995, nearly 500,000 children will have received cash assistance from AFDC or the State Family and Children Assistance Program, and approximately another 450,000 children depend on non-assistance child support collections or potential collections.

One of the major endeavors confronting IDPA each and every day is providing low-income families with coverage for medical care. Since one out of every two children in the city of Chicago is Medicaid eligible and one out of every three births in the state is covered by our program, nearly 75 percent of our budget is dedicated to providing the various categories of medical assistance.

Illinois ranks fifth among the states in total immigration and in the total number of immigrants who legalized under the provisions of the Immigration Reform and Control Act of 1986. There are approximately 155,000 eligible legalized aliens in Illinois, with 7,000 Special Agricultural Workers among them. We also rank fifth in the total number of legal refugees—over 90,000 since 1975. In December 1993, (SFY'94) 87,710 foreign born required public assistance. Of that total, 46% were working poor requiring Medical Assistance only.

According to the Urban Institute study contracted by the federal Office of Management and Budget, the state and local costs for Illinois services to undocumented aliens were as follows: $17.4 million for Emergency Medical Assistance, $112 million for K–12 education, $6.3 million for incarceration. We believe these estimates understate actual costs because they are based on a conservative projection of alien numbers as of October 1992. The Urban Institute estimated 176,000 undocumented resided in Illinois. The current adjusted estimate would be 208,000 according to Urban Institute/INS projections, or as many as 270,000, based on Census projections.

Among individuals receiving emergency Medicaid from the Illinois Department of Public Aid 51,236 or 22.2% of the total number of recipients are foreign born. We estimate, using the single month of December 1993, that of these persons 10,391 or 20.3% are undocumented aliens. Among individuals receiving only Medicaid under the Aid to the Aged, Blind, and Disabled (AABD) program, 23,132 or 9.0% are foreign born, with 1,616 or 7% being undocumented aliens.

Among individuals receiving assistance under Aid to Families with Dependent Children (AFDC) program, 22,505 of the 718,000 persons or 3.2% are foreign born; 0 are undocumented. Of the 72,000 receiving cash assistance supplementing SSI or pending SSI eligibility in the AABD program, 6,669 or 10.4% are foreign born; 0 are undocumented. We believe a few aliens may have beaten the multiple verification system by successfully posing as U.S. born citizens with fraudulent birth certificates or corresponding Social Security Numbers and identifications, but once Social Security confirms it is a valid number on our automated crossmatch with the Social Security Administration, we have no basis to question the citizenship unless other evidence comes to light. An informal survey of offices reveals that the current number of rejected numbers on applications from the Social Security Administration is less than 100 cases, but this method of fraud has the potential to grow.

In the 1980s, prior to the availability of the Systematic Alien Verification for Entitlements (SAVE), client documentation in paper form was accepted at face value by IDPA staff unless it appeared questionable on its face. Any questionable documents were sent for manual verification to INS. The process was time consuming, delayed benefits, and was susceptible to fraud.

To address this, Illinois had the opportunity to test the SAVE system through the Department of Labor in 1984 as one of four pilot sites.

Today, each IDPA intake worker in Illinois has a terminal linked to our statewide computer data base to enter data on all applications for benefits on a single automated intake system. When a noncitizen applies for benefits, the IDPA intake system has an on line crossmatch between our computer and the SAVE system to determine and verify the immigration status of applicants. This complies with the Immigration Reform and Control Act of 1986 (IRCA) in the most efficient manner possible. IDPA uses SAVE statewide, and has been able to verify the immigration status of Public Aid applicants very successfully in 90% of the cases. We process about 5,000 SAVE clearances each month for applications and redeterminations. Our last quality control random sample review, in November 1993, showed a total of .09% of documents verified through SAVE were questionable or fraudulent. This means that out of 60,000 clearances there is a statistical probability that 108 undocumented persons were approved the SAVE clearance for public assistance because of questionable documents. Given this, we do not have evidence that fraud is rampant.

How does SAVE work in a local office?

IDPA staff are not immigration specialists and must rely on the SAVE system. There currently exists several variations of the legal residence permits issued at different time periods, all of which are valid. A caseworker cannot make the determination of which document or status is valid or not, or which document may be a forgery. As a result, staff depend heavily on the SAVE system to help make a determination.

As seen by our caseworkers, SAVE is a labor saving part of our automated system that verifies the status of persons applying for assistance for themselves who identify themselves as applicants and claim to be in satisfactory immigration status and who provide some documentation of their status. The Alien Registration (A) Number is used to access the Alien Status Verification Index (ASVI). The following information is received: first and last name, date and country of birth, SSN, date of entry, INS status, Verification Number and Employment Eligibility Statement.

If there is no match, the message "Institute Secondary Verification" appears on the intake worker's screen. IDPA staff will then institute secondary verification. This is a manual verification process where if an ASVI record is not located, if a document appears to our worker to be forged, if there is no A–Number, or if the document presented is one identified in our policy as not acceptable. The secondary verification policy directs DPA caseworkers to send documents to INS for manual verification. Benefits will be paid if there is an acceptable document presented and copied for the file before this verification occurs. The problem is that it depends heavily on caseworker common sense and judgment because they lack experience in INS forms or skill in deciphering their significance.

While SAVE is very successful when it works, it does have limitations which, on occasion, create problems for our caseworkers. DPA staff rely on SAVE to help clarify and verify the immigration status of Public Aid applicants and clients. However, this expectation is not met when data from INS is not current and up to date or INS files are missing.

Our offices report that between 6,000 and 9,000 verifications a year are returned because INS has inaccurate or missing information on SAVE. We also have experience with refugees from different countries being issued the same alien number due to INS error. It appears that, due to INS staffing and workloads, the older data regarding naturalizations before INS automation (i.e., as late as the 1970's) is often incomplete or missing and newer INS cases may not be reflected on the SAVE sys-

tem for 6 to 8 months. All of these circumstances result in the need for our workers to institute secondary manual verification and either rely on documents or to delay benefits for eligible naturalized citizens and legal residents in Illinois. If there is no reason to question the document, benefits are authorized pending verification. IDPA receives responses on secondary manual verification requests anywhere from 11 days, usually on newer cases, to six months.

In addition to 60,000 SAVE clearances and up to 9,000 secondary verifications, IDPA has an average of 300 cases a year in which a person can neither provide documentation as to his or her citizenship status nor is there data available on the SAVE system. IDPA officials estimate that nearly 30% of these individuals are legally present in the United States and eligible for benefits. They are cases where older individuals, who naturalized their citizenship status as children or young adults and, due to theft, fire, homelessness, or some other circumstance, lost all their documentation—birth certificates, citizenship papers, evidence of veteran's status and social security numbers. In these situations, the SAVE system is not able to provide verification because it requires the alien verification number.

SAVE is not relevant in a fundamental way. An eligibility worker is often faced with the situation of a family applying for assistance, in which some members are eligible legal residents, others are citizen children and others are undocumented aliens. The worker must determine the family's financial eligibility as a whole because everyone's income must be budgeted and then determine which specific individuals are entitled to which benefits. These cases are time consuming and it is critical to maintain a process to distinguish between those who apply and those who do not to ensure eligible citizens and aliens are not wrongfully denied benefits.

In Chicago, the city has resolved this workload issue for municipal services by an executive order prohibiting city employees from questioning clients about their status as a condition for services.

In IDPA, as the agency administering Federal benefit programs, our workers obtain citizenship and alienage information on application. To keep the distinction between applicants and nonapplicants and to comply with a Federal Court Order, IDPA workers have clients complete a form DPA 2781 whenever these mixed household situations arise in applications (Attachment A). This form advises individuals that they are not required to reveal information about their immigration status if they are not applying for themselves. It requires applicants to identify who is, and who is not, applying. The individual must provide citizenship information about any member of the household who is listed as an applicant for benefits, and he or she must also provide income and asset information about every member of the household.

In the case of families where the parents are not eligible for benefits but the children are citizens, this process ensures that the citizen children will receive the benefits to which they are entitled under law. Parents, who may be documented or undocumented, are more willing to be cooperative and ensure that their citizen children receive food stamps, medical assistance and other benefits.

However, every person applying for AFDC Food Stamps or Medicaid benefits for themselves is required to complete Form DPA 3162, (Attachment B), where the client declares his or her alien or citizenship status and is advised of our right to verify with INS. Even when an undocumented parent is applying only on behalf of his/her citizen children, this form must still be completed for the children in order for them to be eligible for benefits. Only for emergency medical care and presumptive eligibility prenatal care is the form not completed. To deny these services would cause cost shifting or result in unacceptable public health risks, care costs and results. In those cases, Form DPA 3162 will be completed on intake for full medicaid coverage. These forms, and the foreknowledge that with the SAVE process we will verify status with INS, effectively deter undocumented persons from pursuing benefits.

The SAVE system also does not necessarily assist caseworkers in addressing the issue of noncitizen applicants who are permanently residing under color of law (PRUCOL). PRUCOL is a category of alien status created under various Federal laws of eligibility for assistance which has no clear legal counterpart in immigration law insofar as is PRUCOL not an immigration category. In essence, the Courts have determined PRUCOL to apply to aliens residing in the United States whose extended presence is known to the INS authorities and action to deport them is not being taken by INS.

INS inaction could be due to the likelihood the alien will legalize or the inability of INS to act for whatever reasons. This has been applied to refugee applicants, persons in Temporary Protected Status, e.g. Cuban and Haitian entrants, and Asylee applicants. Over the years, other categories and preference states have been PRUCOL. This continues to be a dynamic area. As a result, IDPA staff continue to

need to be familiar with PRUCOL, its definition, and its changing application despite SAVE.

In conclusion, while the SAVE system functions in Illinois, it can still be improved. INS needs to enhance its verification system to fill the data gaps, contain temporary statuses, and maintain an up-to-date database. Simplification of documents and statuses would help everyone asking determinations. Secondary verification processing time, while improving, can still get better. Otherwise, there will continue to be some problems, and eligible naturalized citizens or aliens will continue to be improperly denied benefits. The distinction between applicants and nonapplicants must be maintained to not deny eligible persons needed assistance solely due to their household living arrangements. Finally, even if INS corrects all the system gaps, any action in this area to limit eligibility to verified cases needs to recognize issues related to those who have lost documents, public health issues related to those who need presumptive prenatal or emergency services, and the issue of Social Security verification of native born citizens.

Illinois Department of Public Aid

3(PERMANENT)

ATTACHMENT TO ALL FOOD STAMP APPLICATIONS
REGARDING CITIZENSHIP/ALIEN STATUS

You must complete this form before you complete the food stamp application.

If you or any other member of your household are not applying for food stamps because you can't or won't provide information regarding alien status, such information need not be given. The failure to provide alien status information will not affect processing the application for the remaining members of the household. However, any member of your household who is applying for food stamps for himself or herself will have to give information regarding alien status.

1. All members of the household are citizens? ☐ YES ☐ NO

2.a. If not all members of the household are citizens, list below all household members applying for benefits.

_____ _____ _____

_____ _____ _____

b. List below any household members who are not applying for food stamp benefits for themselves because they are unable or unwilling to provide alien status information. They will only be questioned about their income and assets.

_____ _____ _____

_____ _____ _____

_____ _____
Signature-Household Member Date

* * * \

INCLUSION A TODAS LAS APLICACIONES DE SELLOS DE COMIDA
ACERCA DEL ESTADO DE CIUDADANIA/EXTRANJERO

Usted tiene que completar esta forma antes de completar la aplicación de sellos de comida.

Si usted o cualquier otro miembro de su hogar no está aplicando para sellos de comida porque usted no puede o no quiere proveer información acerca del estado de extranjero, tal información no tiene que ser proveída. Fallo en proveer información del estado de extranjero no afectará el procesar la aplicación para el resto de los miembros del hogar. Sin embargo, cualquier miembro de su hogar que está aplicando para sellos de comida para él o ella tendrá que proveer información acerca del astado de extranjero.

1. ¿Todos los miembros del hogar son ciudadanos? ☐ SI ☐ NO

2.a. Si todos los miembros del hogar no son ciudadanos, ponga abajo todos los miembros del hogar que están aplicando par beneficios.

_____ _____ _____

_____ _____ _____

b. Ponga abajo todos los miembros del hogar que no están aplicando para beneficios de sellos de comida porque no pueden o no quieren proveer información acerca del estado de extranjero. A ellos solamente se les preguntará acerca de sus ingresos y bienes.

_____ _____ _____

_____ _____ _____

Firma del Miembro del Hogar — Fecha

* *

SEE OTHER SIDE FOR ENGLISH

* *

Instrucciones al Trabajador: Todas las personas nombradas en el 2.b. arriba han de ser considerados como extranjeros inelegibles y no se les debe preguntar nada acerca del estado de extranjeros. Se les puede preguntar solamente acerca de sus ingresos y bienes.

Firma del Trabajador — Fecha

Illinois Department of Public Aid

1(PERMANENT)

ATTACHMENT TO APPLICATION
Declaration Regarding Citizenship/Alien Status

Case Name
Nombre del Caso: _____

Date of Application
Fecha de la Aplicación: _____

Case Number
Número del Caso: _____

(A separate form is to he signed by the applicant and by each person age 18 or over who is requesting/receiving assistance as an adult.)

I declare, under penalty of perjury, that the statements I have made regarding the citizenship or alien status of each person requesting assistance are true and correct.

I understand that the alien status of each person requesting assistance who is not a citizen of the United States will be verified with the Immigration and Naturalization Service (INS). This will require the disclosure to INS of certain identifying information which I have provided. The information received from INS mav affect eligibility for assistance and the benefit level.

_____ Date

_____ Signature

(Una forma, por separado, tiene que ser firmada por el aplicante v por cada persona de 18 anos o más que está pidiendo/recibiendo ayuda como un adulto.)

Declaro, bajo pena de perjurio, que las declaraciones que vo he hecho acerca del estado de ciudadanía o de extranjero por cada persona pidiendo ayuda son verdaderos v correctos.

Entiendo que el estado de extranjero de cada persona pidiendo avuda, que no es un ciudadano de los Estados Unidos, será verificado por el Servicio de Inmigración v Naturalización (INS). Esto requerirá la revelación a INS de cierta información de identificación que yo he proveído. La información recibida de INS puede afectar la elegibilidad para avuda y el nivel de beneficios.

_____ Fecha

_____ Firma

DPA 3162 (N-6-89)

IL478-1954

OFFICE OF THE MAYOR
CITY OF CHICAGO

RICHARD M. DALEY
MAYOR

EXECUTIVE ORDER 89-6

IN ORDER to assure that all residents of the City of Chicago, regardless of nationality or citizenship, shall have fair and equal access to municipal benefits, opportunities and services, I, RICHARD M. DALEY, Mayor of the City of Chicago, Illinois, do hereby Order:

SECTION 1. The policy of the Office of the Mayor is declared to be to encourage equal access by all persons residing in the City of Chicago, regardless of nation of birth or current citizenship, to the full benefits, opportunities and services, including employment and the issuance of licenses, which are provided or administered by the City of Chicago. To that end, the provisions of this Order shall be liberally construed to provide such access to the extent consistent with applicable legislative and common law provisions.

SECTION 2. The following definitions shall apply to this Order:

(a) Agency. "Agency" means every department, agency, division, commission, council, committee, board, other body, or person established by, or acting on behalf of the City of Chicago at the direction of the Mayor, except the City Council and its committees.

(b) Agent. "Agent" means any person employed by or acting on behalf of an agency as defined in Section 2(a).

(c) Mayor. "Mayor" means the Mayor of the City of Chicago or his duly authorized agent.

(d) Citizenship or residency status. "Citizenship or residency status" means all matters regarding questions of citizenship of the United States or any other country, questions of authority from the Immigration and Naturalization Service of the United States Department of Justice to reside or otherwise be present in the United States, and the time or manner of a person's entry into the United States. The use in this

Order of the term "residency" shall not mean street address or location of residence in Chicago or elsewhere.

SECTION 3. No agent or agency shall request information about or otherwise investigate or assist in the investigation of the citizenship or residency status of any person unless such inquiry or investigation is required by statute, ordinance, federal regulation or court decision.

SECTION 4. No agent or agency shall disseminate information regarding the citizenship or residency status of any person unless required to do so by legal process.

SECTION 5. No agent or agency shall condition the provision of City of Chicago benefits, opportunities or services on matters related to citizenship or residency status unless required to do so by statute, ordinance, federal regulation or court decision.

SECTION 6. All applications, questionnaires and interview forms used in relation to City of Chicago benefits, opportunities or services shall be promptly reviewed by the pertinent agencies and any questions regarding citizenship or residency status other than those required by statute, ordinance, federal regulation or court decision, shall be deleted therefrom within 60 days of the date of this order.

SECTION 7. This Order takes effect upon its signature by the Mayor and its receipt and filing with the City Clerk.

RICHARD M. DALEY
Mayor of the City of Chicago

DATED: April 25, 1989

Received and filed _____, 1989

WALTER S. KOZUBOWSKI
City Clerk

Mr. BRYANT of Tennessee. Thank you, Mr. Antolin.

Ms. Johnson-Bullard.

STATEMENT OF ESPERITA JOHNSON-BULLARD, ELIGIBILITY SUPERVISOR, DIVISION OF SOCIAL SERVICES, DEPARTMENT OF HUMAN SERVICES, CITY OF ALEXANDRIA, VA

Ms. JOHNSON-BULLARD. Thank you for having me.

My name is Esperita Johnson-Bullard, and I'm an eligibility supervisor with the City of Alexandria's Department of Human Services, and I work in the Division of Social Services. My department is responsible for administering benefit programs, including AFDC, Food Stamps, and Medicaid, as well as other State and local programs. I'm going to focus my statement on the SAVE Program and on the treatment of income for aliens in the three major programs of AFDC, Food Stamps, and Medicaid.

The Immigration Reform and Control Act of 1986 requires verification of alien status when applying for ADFC, food stamps, and Medicaid. INS uses the automated system of SAVE to satisfy this requirement. Our mainframe computer for SAVE is located in our central office in Richmond, VA, and we're connected to that by a modem.

This SAVE system is easy to use. The workers enter the alien number into the system, and shortly thereafter they get a response of what the status is of the alien. So SAVE is confirming for the worker that the INS records match the alien document that has been presented to us.

We sometimes have to institute a secondary request, and sometimes that response may come 2 to, say, 8 weeks, and that's kind of on the long end. We are not to delay benefits while we're waiting on SAVE to respond. So, therefore, the potential is there for someone to receive benefits and later we discover that they are not actually entitled to receive.

SAVE is also not giving us information on entitlement to benefits. We're simply knowing what the status is, but we don't know whether or not the alien status meets the requirements to receive benefits under the three major programs.

I would like to see SAVE enhanced to include sponsorship information, whether it be an organization or a group, as well as possibly tell whether or not they're entitled to receive from the three major programs. And, hopefully, if the rules are uniform for entitlement, for AFDC, food stamps, and Medicaid, that would help to simplify and reduce errors by the workers who are determining eligibility for benefits.

I'm going to talk a little about the Food Stamp Program and how we evaluate the income. We're looking at the sponsor's income and resources, a portion of the sponsor's income and resources for aliens, as well as counting alien's income, if they have any, from employment. For an individual who is not an eligible alien to receive or ineligible alien, a pro rata share of their income is counted to the assistance unit, whereas in citizen households, if you have a parent that's applying, you're looking at the full income of those parents and not reducing, say, taking out the portion that belongs to the parent applying. And sometimes in cases we have found that an alien household may be entitled to receive whereas a citizen

household of the same income will not be eligible to receive benefits. It's a very sensitive issue in our office among workers, and it's just something that I would like to see where we focus on the initial gross income for all members applying or households applying before deducting any benefits due to the alien's ineligible status.

The AFDC Program, the income and resources of a sponsor is deemed available for 3 years. The income for an ineligible alien parent, you have various deductions that you allow prior to counting any income toward those eligible members or citizen children in the household. And, again, you have a similar situation where you may have individuals who are or who have ineligible alien members, households entitled to receive benefits; citizen households of the same income may not be entitled to receive because you're looking at the gross income initially as opposed—before any deductions are allowed.

With the Medicaid Program, an individual must be a citizen of the United States or an alien lawfully admitted for permanent residence or otherwise currently residing in the United States under color of law. An alien who does not meet those requirements may be eligible for some Medicaid services as a nonresident alien. Nonresident aliens are only eligible for limited Medicaid coverage and can only receive for emergency medical services.

The sponsor's income is not applicable in Medicaid. The gross income of the legal alien and the ineligible alien household members are evaluated the same as it is for households that have all U.S. citizens. The gross income is evaluated following rules as it relates to families' and children's categories and as it relates to the age, blind, and disabled. And we allow the appropriate disregards for those incomes.

And that concludes my statement. If you have any questions, I'll be more than happy to attempt to answer them.

[The prepared statement of Ms. Johnson-Bullard follows:]

PREPARED STATEMENT OF ESPERITA JOHNSON-BULLARD, ELIGIBILITY SUPERVISOR, DIVISION OF SOCIAL SERVICES, DEPARTMENT OF HUMAN SERVICES, CITY OF ALEXANDRIA, VA

INTRODUCTION

Good morning Mr. Chairman and Subcommittee Members, My name is Esperita Johnson-Bullard and I am an Eligibility Supervisor for The City of Alexandria's Department of Human Services, Division of Social Services.

My Department is responsible for the administration of benefit programs including AFDC, FS, Medicaid and other state and local programs. I am responsible for supervising eight eligibility workers in the determination of eligibility for the various public assistance programs. I will tell you a little about Alexandria, how the Systematic Alien Verification for Entitlements (SAVE) Program is used and its effects on the workers determination of eligibility, evaluation of income for aliens, as well as highlight some other problems our agency encounters in providing services to aliens and recommendations for further enhancement of SAVE and consideration of equitable policy rules as it relates to evaluating gross income for all applicants.

The City of Alexandria has a population of 116,400 with 7% of its residents receiving public assistance. Of the 7%, Alexandria has seen rapid growth in its alien population over the past 5 years, with approximately 10% of the residents served being of an immigrant background. Alexandria has adjusted to the special needs of a large immigrant clientele to deliver services and has found it necessary to hire several bilingual workers and to train our staff on the unique rules for aliens. Cultural training is also necessary for dealing with misconceptions and reducing prejudices.

Our agency has also found it necessary to inform immigrant communities of available services through outreach programs.

The SAVE Program

The Immigration Reform and Control Act of 1986 requires verification of alien status when applying for AFDC, food stamps and medicaid. INS uses the automated system of SAVE to fulfill this requirement. The mainframe computer for SAVE is located in our Central office in Richmond, Va. and our local office is connected to that mainframe by modem.

The system is very user friendly and workers are trained to use it in a short period of time. Inquires are made by simply entering the alien number of the applicant. within minutes SAVE provides the name, the birth date and the alien status of the card holder. SAVE is confirming that the alien card information matches with INS records.

If the input information provided to SAVE seems unclear, the system's response is to request that a secondary verification be instituted by sending a manual form to the INS office. Response to the secondary request has taken generally from two to eight weeks, this delay potentially results in errors in receipt of benefits. Occasionally cases are closed or individuals removed because SAVE information conflicted with the documents provided to our office.

There are varying opinions among eligibility workers as it relates to the usefulness of SAVE. Many workers have found SAVE to be more useful in identifying the status of an alien. When used for this purpose SAVE has eliminated hours of attempts to contact INS for verification of the alien status. In the workers view, the main adverse effect of SAVE is that it increases the time it takes to determine eligibility as it is additional paperwork to be added for the completeness of a case record and could be reduced if workers were only required to use SAVE for questionable documents.

Determining Eligibility (SAVE)

In determining program eligibility for aliens, SAVE confirms if an immigration document is valid, but this does not help the worker determine if an applicant meets the alien requirements to receive benefits from Federal programs. This determination remains difficult because of numerous types of INS documents and the variety of rules as they apply to aliens in each Federal program. The confusion caused by unclear rules on the eligibility of aliens have led localities to make different determinations on applications. Uniform rules in alien eligibility determination for Federal programs would minimize confusion and assist in ensuring correctness in eligibility determinations.

Also, the lack of coordination between INS and social services officials has resulted in cases being approved or denied in error. SAVE needs to tell more than the validity of a document. It would be beneficial if the system would include program entitlements and sponsorship information (individual or organization). In order to achieve this enhancement INS and social services officials will need to work together on clarifying the eligibility of aliens for assistance.

Determining Eligibility (Income)

FOOD STAMPS

Portions of the gross income and the resources of a sponsor and the sponsor's spouse (if living with the sponsor) shall be deemed to be the unearned income an resources of a sponsored alien for three years following the alien's admission for permanent residence to the United States.

A pro-rata share of the income of an ineligible alien shall be counted to the remaining household members. This pro-rata share is calculated by first subtracting any allowable exclusions from the individual's income and dividing the income to the remaining household members. All but the amount attributed to the ineligible alien is counted in computing the household's income for eligibility and allotment purposes. A pro-rata share of the households shelter expenses is also considered in the eligibility determination.

For comparative households of the same income, members and expenses the gross income of those required to participate together in the food stamps program is counted before appropriate income disregards are allowed. I would like to see that households that include ineligible aliens (who are required to participate with the other household members) have the gross income of the household evaluated prior

to determining pro-rata shares for the remaining members that are eligible to receive benefits.

AFDC

For the purposes of determining eligibility, the income and resources of any person who sponsored an alien's entry into the United States shall be considered to be the unearned income and resources of the alien for a period of three years after the alien's entry into the United States.

The income of an alien parent who is ineligible for assistance due to his/her alien status must be evaluated to determine what amount, if any, must be considered available to the assistance unit, or deemed, regardless as to whether the income is actually made available to the unit. Specific procedures for deeming and allowable deductions are subtracted and the remaining income is counted as unearned income and deducted form the grant.

I would like for policy to consider the same initial gross income screening for all parents when applying for assistance, prior to allowing deductions due to a parents ineligible alien status. With AFDC, the difference is alien households with the same income as households that does not consist of an ineligible parent, may be determined entitled for reduced AFDC cash assistance and medicaid, whereas, households with eligible parents of the same income may not have passed the initial gross income screening.

MEDICAID

An individual must be a citizen of the United States or an alien lawfully admitted for permanent residence or an alien otherwise permanently residing in the United States under color of law to be eligible for all medicaid-covered services. *An alien who does not meet these requirements may be eligible for some medicaid services as a non-resident alien.* Non-resident aliens are only eligible for a limited period of medicaid coverage, and can receive only emergency medical services covered by medicaid.

Sponsorship is not applicable in medicaid. The gross income of the legal alien and ineligible alien household members are evaluated the same as it is for households that have all U.S. citizens. The gross income is evaluated, following rules as it relates to Families and Childrens categories and as it relates to the Aged, Blind and Disabled, allowing the appropriate disregards.

CONCLUSION

In conclusion, I will briefly summarize the information presented. Agencies serving a large clientele of aliens require a staff with bilingual skills. Cultural training is necessary to reduce misconceptions and prejudices. Outreach programs are needed to inform the immigrant community of the availability of services.

SAVE has improved the verification of the validity of immigration documents. However, workers have found SAVE more useful in clearly identifying the alien's status. Even after confirming the status, the worker still has a difficult time determining if the status meets the alien requirements to receive public assistance.

Our recommendations include enhancing SAVE to provide information on the eligibility of aliens for Federal programs, to include sponsorship information and to develop uniform rules on the eligibility of aliens for public assistance.

I also recommend that the initial screening for gross income be evaluated the same for all households in the food stamps and AFDC programs prior to allowing deductions due to the ineligible alien parents alien status.

These recommendations will result in better service for eligible documented aliens while reducing the number of alien cases receiving assistance in error, as well as, give equitable evaluation of income for all applicants regardless of citizenship or alienage.

Thank you, Mr. Chairman and distinguished committee members, for allowing me the opportunity to present our views on the SAVE program and views on the treatment of income for aliens.

Mr. BRYANT of Tennessee. Thank you. Thank you, Ms. Johnson-Bullard.

I want to thank all the panel members for summarizing their testimony in a succinct and effective manner.

Let me begin with Mr. Velde. I have just a couple of questions for you.

Mr. VELDE. Yes, sir.

Mr. BRYANT of Tennessee. In reviewing your testimony, written testimony and your oral testimony today, are you proposing that there be one Government data base for all identification purposes?

Mr. VELDE. No, not at all. In today's computer age, it's possible to interface and have online exchange of identifier information. What we need is the functional equivalent of a national system. Already there is exchange of Federal, State, and local criminal history information. There is much experience in regulating in setting standards, and so on. We need the same kind of enabling Federal legislation to authorize—in fact, mandate—exchange of this identifier information as is already in place for criminal history information.

Let me give a good example. In 1982, the National Drivers' Registry was created at the Department of Transportation. The law requires all State DMV's, before a truckdriver's license is issued, to check with the national data base of bad drivers to see (a) whether that driver has more than one license in more than one State and, secondly, whether he has a bad driving record. So the DMV checks with other States and with the Federal Government to determine eligibility.

The same exact kind of check is starting to be done when buying guns under the Brady Act. The same kind of check could be done for employment eligibility.

Before a driver's license or State identification document is issued, the California experience. As was testified here this morning, the California DMV is now checking with INS and SSA prior to issuing of the driver's license. I understand that in the past year California has rejected 10 percent out of 20 million drivers, or 2 million. That's a very impressive number. That needs to be implemented nationwide.

That's what we're talking about. You don't need a national ID system. You need Federal enabling legislation. Incidentally, there's a Federal prohibition on NDR of sharing the driver's information with criminal justice agencies, and, yet, who enforces the driving laws? The criminal justice agencies. The California DMV exchanges a million messages a day with the Department of Justice of California, including bad driver and all kinds of criminal history information. We're just deluding ourselves when we put up these artificial so-called firewalls.

Mr. BRYANT of Tennessee. How would you propose to protect the rights of the private citizen in that situation?

Mr. VELDE. When the States began to exchange criminal history information online, the Congress passed enabling legislation in 1973 which, first of all, authorized Federal regulation of the interstate exchange criminal history information. The law provided for protection of privacy of those individuals who are subject of these data bases, and for protection of system security. The regulations have been in effect since 1976. Similar kinds of enabling legislation and regulation need to be put in place for identification system. This system has worked now for almost 25 years on exchange of criminal history information with very little problems. It's at least as sensitive, if not more sensitive, than any identifier information.

We have also legislation with respect to exchange of private credit history. Federal——

Mr. BRYANT of Tennessee. Is the identifier in these systems the Social Security number?

Mr. VELDE. It can be; it doesn't have to be. You have a combination in exchange of criminal history information, about 8 or 10 what are called name identifiers—name, date of birth, address, physical descriptors, and so—and then the biometrics such as the photograph, fingerprints, and signatures.

Mr. BRYANT of Tennessee. What features, identifier features, do you think would be critical to involve, to include in a uniform standard of identification?

Mr. VELDE. At least a unique identifying number, and it should be the Social Security number today, but not necessarily so in the near future. For example, utilizing DNA technology, it will shortly be possible to generate a unique DNA sequence of up to 1,000 numbers online real time.

We have very large existing data bases on fingerprint information and mug shots, or photographs. Those are very good biometrics now. The hardware and the software is being rapidly developed so that the mug shot—in fact, that's the identifier for the French national ID system now, and it has been for a number of years. And the signature—all of these things are perfectly acceptable to establish or verify identity.

What you do is you have a continuum from zero to 100. On the zero end of the scale, you don't know who that person is. On the 100 end of the scale, you are absolutely positive. So you're going to sentence that person to an additional 20 years because of three prior felony convictions you must be absolutely certain that that person has the conviction. But, for most identification purposes, you don't have to bat 1,000 percent. If you're up in the 90's—and you can do this by a combination of name and physical or biometric identifiers it is sufficient for most identification purposes. It's a tradeoff of cost; it's a tradeoff on protection of privacy as well, but you can do very well very economically.

As an example, the present State DMV system in California involves 20 million drivers. These biometrically-loaded identification documents are managed by a PC-based system. 160 DMV offices around the State issue renewals. The initial issuance of these cards is done centrally by a contractor, but, again, on a PC-based system. That's one of the largest identification systems in the world that is biometrically loaded.

Mr. BRYANT of Tennessee. You mentioned or made reference to DNA coding perhaps being on this.

Mr. VELDE. Yes.

Mr. BRYANT of Tennessee. We haven't looked into that in terms of this committee, and initial blush it might seem excessive, except perhaps in certain specialized cases. What would be, in your opinion, the downside to going to that type of——

Mr. VELDE. Well, there are concerns of Big Brother, invasion of privacy, and so on. A number of States already are building DNA data bases on convicted felons. Now the sequencing technology, the state of the art today, is expensive; it's not online, but a year or 2 years from now at most the technology will be online and very

cheap. At that point, and 5 to 10 years downstream perhaps, you won't need identification documents at all, and the only time you need to interact to receive a governmental benefit or to be identified positively, you simply would breathe into a receptacle, or provide a piece of hair or a fleck of skin as a sample of who you are and online, in real time you have a unique identifier. It's not here today or tomorrow, but it's not too far in the future, either.

Mr. BRYANT of Tennessee. Do you feel—and I'll ask Mr. Fragomen a question here in a minute about this, but you've heard his testimony that I understood that he felt that the use of the identifier Social Security would be—is 90 percent—I think it was 90 percent accurate. Do you feel that we need more?

Mr. VELDE. If you're giving out governmental benefits I must take exception to the testimony that was submitted earlier this morning. You look at GAO and Inspector General audits of all these Federal entitlement programs over the past 20 years—and I can give this committee plenty of citations—they talk about fraud of 10 to 20 percent, $2 to $3 billion a year in food stamps alone. Here's the Government Computer News of 1 week ago which talks about 5 billion dollars' worth of fraud on the IRS itself. Three million Federal income tax returns are being held right now and 800,000 have been turned down because of fraudulent claims for dependents on income tax returns.

There are all kinds of reports, committee reports, studies that have been made. We're looking at substantial savings, substantial job opportunities lost, and so on. All the benefits of society which undocumented, misdocumented, ineligible or prohibited persons are taking advantage of because we don't have either a national ID system or the functional equivalent.

Here is my national ID card from a country I was involved in consulting with a corporation. This was paid for by the U.S. Government because the United States was concerned about election fraud in that country. It's biometricly loaded. It has fingerprints, signature.

Mexico has a national ID system with a smart card, a computer chip on it, because they were concerned about election fraud. But the U.S. Government paid for a $60 million national identification system with a $5 to $6 ID card. We're so far behind the rest of the civilized countries of the world and many developing countries, it's really laughable.

Mr. BRYANT of Tennessee. Thank you, Mr. Velde.

Mr. VELDE. Sorry for the long answer, Mr. Chairman.

Mr. BRYANT of Tennessee. No, that's fine.

Mr. Fragomen, would you like to comment on that, or I've got a question? I don't want to restrain any debate here, but let me go ahead and ask you a question.

You mentioned you represent multinational companies and expressed concern with the emphasis that the INS, in your view, puts on employers inside the country vis-a-vis maybe a better policy would be to have better efforts on the borders to keep the people from getting in in the first place. We've heard a great deal of testimony in other hearings, not today, that one of the key, if not the main, reason people come across the border and take that chance in getting in is for economic reasons. They want the good jobs that

are available here in America. And I think that's the logic behind why we put that requirement on employers. And I understand there may be verification exercises placed upon employers, but how could the verification process that your members have to go through be made any user-friendly from your——

Mr. FRAGOMEN. I think the key is you have to look at the different—you have to really segment employers. Major corporations who have an incentive to only hire legal workers and be in compliance, interestingly, had voluntary programs even before 1986, when employer sanctions were enacted. And major employers, basically, always went out of their way not to hire undocumented workers.

Now prior to 1986, oddly enough, it was actually easier for them to do that because they didn't have IRCA to deal with and they didn't have alienage discrimination, and they could just ask anybody pretty much for whatever they wanted, and it was fairly easy for them to find out who was here legally and wasn't, not that that was a particularly desirable policy or scenario, but that's how it was.

Now what's occurred now is that INS enforcement, as oriented toward large employers, tends to be driven by paperwork-type violations. As you know, there are two types of violations you can have. One is knowingly employing or continuing to employ someone who is not legally authorized to work, and the other is failure to complete all the paperwork properly. And the decisions of administrative law judges interpreting what constitutes a violation can strictly construe paperwork obligations. So if you don't fill in one blank on an I–9 form, you're in violation and could be fined up to $1,000 per I–9.

So what's happened, in essence, is we've turned this into a paperwork completion test. And the INS goes in and a company has hundreds of I–9 forms that aren't filled out perfectly according to the protocol, and they can be sued hundreds of thousands of dollars for that, if they have a large work force.

So what I'm suggesting is, vis-a-vis that particular employer group, what they really need to do is have a verifiable card. So if everyone who came in and looked for a job had an identity card of some sort or other, whether it's a telephone verification system—I personally think that issuing secure Social Security cards is the way to go since you already have a data base and you've already screened a number of people into that data base. So that would be what would be ideal for large employers.

For smaller employers, of course, it's even more acute to have a simple process where someone has a card issued by the Government, a Social Security card, or whatever, because they don't really have the wherewithal to even train their personnel as to how to comply with this. Where you're dealing with employers who do have large populations of undocumented aliens, what you find is that document fraud is pervasive, and particularly what they have is they have false alien registration cards and employment authorization documents. I think the number or the incidence of fraudulent Social Security documents, in my opinion, is relatively low in proportion to the number of fraudulent INS documents. So that's the area where I think the most needs to be done.

And, of course, the third group of employers, you have the underground economy, where no one has anything, and I've heard figures that that can represent as much as a trillion dollars a year in terms of the GNP. So——

Mr. BRYANT of Tennessee. In terms of the legitimate employers, would it be helpful, would the job of the employer of verifying be made easier if the list of documents that a job applicant could present for work were narrowed; there were fewer documents that you would be entitled to review?

Mr. FRAGOMEN. Well, as you know, right now there are 29 documents. The INS has regulations that will reduce it to 16 be eliminating such things as the merchant mariner card and the U.S. Coast Guard card, and things of that sort. So if you actually look at the cards that are being, or the types of documentation that are being, eliminated under their proposal, I would suggest to you that they really don't make a whole lot of difference. That's not the problem. It's not—the fact that there are a lot of documents is one problem, but the big problem is the fact that a major corporation might have to train hundreds of human resources specialists to be experts in the process, and it's just very difficult to administer.

So I would say, yes, the number of documents, if it were reduced to one or two, then that would make a major impact. If it's reduced from 29 to 16, no, I don't believe it will.

Mr. BRYANT of Tennessee. Given your answer, based on the high number of fraudulent documents, would it be helpful to your folks for the INS to assist them, especially in industries where there's a high concentration of illegal aliens, to have them assist in the screening of these aliens? And, as I understand, the INS has even already initiated a review—an offer to assist in the review of the authenticity of documents submitted to employers. Are you aware of anything like that, and would it be helpful if the INS got involved at that point?

Mr. FRAGOMEN. They have a pilot program, as you know, the TVS Program, where a certain number of employers—I believe it's, oh, some nine employers, or whatever, have been participating and they're planning on expanding it. And that's certainly helpful to employers, where they can run the numbers, the alien registration numbers, is what this TVS system used back through the system.

But I would suggest to you that the system is really fairly limited in terms of its applicability because all it really does is verify alien registration cards. It, curiously, doesn't even deal with other types of work authorization documents. It doesn't deal with employment authorization documents issued by the Immigration Service to refugees, applicants for immigration benefits, adjustment of status, et cetera. So you're dealing with a very small segment of the alien population that would be permanent residents of the United States. So although I think that's helpful, they obviously have to expand their system to include all kinds of documents.

But I would suggest to you that, ultimately, what should be happening is we should be funneling everyone through the Social Security system, so that when alien goes and applies for a Social Security card, they then have to show documentation and then Social Security verifies with Immigration the validity of the card. And if we ran everyone through one central point, I think that we'd be

way ahead and really take the employer out of the system, and I think that should be the ultimate goal.

Mr. BRYANT of Tennessee. Mr. Antolin, let me ask you just a few questions, if I could. I'm looking for one I have here.

I understand that the policy of the office of mayor in Chicago is declared to be—to encourage equal access, I guess I should say, of all persons residing in the city of Chicago, regardless of nation of birth or current citizenship, and so forth. Are you familiar with that policy?

Mr. ANTOLIN. Yes, I am. The city of Chicago happens to have the largest Polish population outside of Poland and a very large Mexican and other—a very large Russian immigrant population in it. So that we have many different cultures, and what prompted that policy was the denial of services to an official of the city administration because he looked like a noncitizen, he happened to be a Hispanic, as I am, and he didn't present the right look to the person who was giving the services. I don't recall what the services were.

Mr. BRYANT of Tennessee. But, as I understand, though, this entitlement would be the full benefits, opportunities at service, including employment, issuance of licenses that are issued by Chicago. But, in other words, the policy of Chicago is that, regardless of your nation of birth or—and what I'm concerned with is current citizenship—that you're entitled to these things. And, to me, that appears to be in direct conflict with what we're talking about here in Washington in Federal law.

Mr. ANTOLIN. Well, they don't administer any of the benefits unless you get to the JTPA type of programs, but in all of the benefits that we administer—we're a State-run, not county-run system, and so the offices in Chicago that make benefit determinations are part of my agency and do not have anything to do with city government.

If I may comment on something you said earlier——

Mr. BRYANT of Tennessee. OK, please.

Mr. ANTOLIN. The evidence of fraud in the welfare system is not about—is not really related to this issue. The principal fraud is related to unscrupulous food stamp retailers, medical providers, and then there are individual cases; the dollars from individual fraud don't come close to the first two categories and the error rate from quality control which is often cited as a fraud indicator, is not about fraud; it is about an error in getting documentation. The case may actually have been correctly paid, once we get all the documentation, but it will show up as an error if we didn't process it right. And that distinction gets lost in a lot of the reports about these documents, including by the GAO, when they don't understand what HHS and Agriculture are doing with quality control reviews of States.

So that with respect to noncitizens, we are confident that SAVE is working in terms of verification. Where we are not confident is the Social Security number, and we don't have any evidence one way or the other as to how many fraudulent Social Security numbers are out there.

Mr. BRYANT of Tennessee. Let me ask—bring Ms. Johnson-Bullard into this because in many ways your testimony is the same, and my questions generally track each other for both of you,

and I'd like to get your idea both from Chicago and from Alexandria.

If you could, we've talked a little bit about—and I think, Mr. Antolin, you referred more to the process of verifying benefits eligibility, but if you could, Ms. Johnson-Bullard, would you walk us through that process of how it's done in Alexandria in verifying benefits eligibility?

Ms. JOHNSON-BULLARD. Well, we have a walk-in system in Alexandria and clients can come in any time between—our office hours are 8 to 5, and we have intake workers that they see the clients as they come in; the client picks up an application from our front desk staff and completes it. A worker will interview the client for the various programs that they may be applying for. At the time of the interview, the worker is giving the applicant a checklist of verifications that is needed to verify their entitlement to receive benefits under the program, which would require Social Security verification, birth certificate, if it's required for the program, and allow them a deadline to return verifications to our agency. And we evaluate it once we receive it and determine the eligibility for entitlement.

Mr. ANTOLIN. In our State, because we have an electronic application system, there's an awful lot of electronic cross-matches. As I recall, in advising our appropriations committee in the State last year, there's 18 of them. I don't remember all data matches. I know that we do electronic cross-matches with our employment security agency with respect to unemployment benefits; with Social Security, both to verify the number and to see if there's any benefits being paid; with the department of revenue to see if there's income being reported, the State department of revenue. We check deaths, because that is also a computer match, to make sure that we don't have somebody who had died who is now applying for benefits.

We require birth certificates for all the children——

Mr. BRYANT of Tennessee. In Chicago they vote; I know that already.

[Laughter.]

Mr. BRYANT of Tennessee. I mean—well, go ahead.

Mr. ANTOLIN. You couldn't tell; the Republicans assumed majority of both of our houses this last election. So not enough of those voted.

[Laughter.]

Mr. ANTOLIN. We also, if there is income involved, we ask for pay stubs. If the person does not have pay stubs, we request verification from the employer, if we cannot get it any other way. There's a series of other verifications. If there's a lease or rent receipts, because it's relevant for food stamps, utility bills because that, too, is relevant for food stamps, if it's a Medicaid case and they're seeking to apply for Medicaid only, we'll ask for the individual to show us their medical bills and their hospital records or we will get them because that's relevant to determine eligibility, particularly, in a spend-down status. It's a fairly complicated process because of all the verifications, but those preemptive kinds of verifications help reduce the amount of fraud in terms of payments made to the wrong people down the road. And, of course, there's SAVE. I didn't mention that one.

Mr. BRYANT of Tennessee. Let me ask each one of you, what is the policy or procedure in your offices if during these checks you determine that there is—there are fraudulent documents or that you have an illegal alien there? What do you do at that point?

Ms. JOHNSON-BULLARD. We would notify the applicant or recipient at that point, if they're receiving benefits, of the discrepancy in information given, and give them—we're required to give like 10-day advance notice prior to being able to close a case. So we would be initiating that at that time and requesting the appropriate verification to either validate that they are entitled to receive—we also require—well, we actually do DMV/VEC screening initially upon a person's applying prior to determining eligibility. Sometimes they don't always—clients won't always report that they have a car or that they have been working, or when that employment ended, and we do have access to request that prior to approving. Most times we are able to clarify it before approving.

Mr. ANTOLIN. If we discover it on application, we'll deny the assistance unless it's a situation where it's an undocumented alien applying for food stamps and the reason for the denial is their undocumented status. That would get reported to INS. That happens very infrequently.

If we find from SAVE if there is a secondary verification and it's a denial, we'll have to go through that process because due process dictates that we have to notify the person that their benefits are being terminated unless they come in and give us better documentation or correct whatever the problem is, and that an overpayment will get established, and that we would proceed to try and intercept their taxes or, if they're working, seek a wage garnishment or, if it's fraud, refer it to our State police to do an investigation for our attorney general to proceed with criminal or civil fraud action.

Mr. BRYANT of Tennessee. Is there any step in this process where you actually call INS and say, "I've got somebody here that shouldn't be in the country, and would you come take them and deport them?" Is that built in?

Mr. ANTOLIN. No, I mean, our caseworkers probably are not capable, certainly not trained, to make those distinctions, those determinations. What they are trained to do is, if the SAVE comes back not verifying, to ask the client for something else. A certain number of clients disappear, and then we cancel them as noncooperation because we just don't know why they've disappeared. Some of them provide documentation and then we go through a secondary process. It would require some law enforcement techniques, I think, to be able to determine what's legitimate, what's not, what's the right statuses. We have policy that lists what are the statuses that are legal under permanently residing under color of law and also the food stamp and Medicaid laws, but that's about as far as staff can go in terms of their being able to do this. It's just one part of many in verification.

Mr. BRYANT of Tennessee. But are referrals made——

Mr. ANTOLIN. They do refer to INS for verification, though, and we tell everybody upfront—there's a part of the application appended to my written comments—that as part of the application process we notify everyone who is not a citizen that we're going to

verify what they tell us with INS, and that, too, causes some people to say, well, I think I won't do this.

Mr. BRYANT of Tennessee. Yes. But it may—is it not logical, though, that you get someone's address, and so forth; you know where they live, and then you subsequently discover that they have presented fraudulent documents or they're illegal immigrants, and they go through all the due process that I understand you have to do, but then to refer it to somebody who has that ability to go out and arrest them at that address and begin that procedure of deportation? Is there anything built into that where you do that or do you all just administer the programs?

Mr. ANTOLIN. I would say in the rare case where it went that far, we would refer it to INS. In the typical case, the client pulls out of the process when they realize the verification is happening and they're going to get caught. And then we don't know for sure that that's the reason—people withdraw for lots of reasons.

Mr. BRYANT of Tennessee. Yes?

Ms. JOHNSON-BULLARD. Primarily, the ineligible alien does not normally request assistance for themselves. They're usually applying for the citizen children only. So we're not actually pursuing any information on that individual. So they have actually not made an application for themselves. So we're not reporting anything on those individuals that don't apply for assistance.

Mr. BRYANT of Tennessee. Is there anything in the process that would allow you, that would permit you to discover that the parents are illegal aliens?

Ms. JOHNSON-BULLARD. Could you repeat that?

Mr. BRYANT of Tennessee. Is there anything, when you're going through the procedures of taking the application, is there anything in there that would give you a clue that these parents may be illegal aliens, even though their child was born in America, would be a citizen?

Ms. JOHNSON-BULLARD. Now, generally, this is information that they will give to you when they're applying if they're not eligible to receive. They're not necessarily just hiding that information from us.

I am not—I don't know what the percentage is of those that come in with fraudulent documents and actually attempt to receive for themselves. That's just not very high right now, at least in our agency.

Mr. ANTOLIN. There are a fair number—because of the enumeration of specific categories for food stamp eligibility, and it doesn't match up with the INS enumeration of what constitutes legal status in the country, there are a lot of categories of legal aliens who are not eligible for food stamps and who don't apply for themselves, as well as an undocumented alien who doesn't apply for themselves, but distinguishing between those two is not something we do. If a noncitizen is only applying for the citizen members, that's all we take the application for, but we do consider the income and the assets in determining what the benefit amount is for this citizen that is the income of the entire family for the citizen children.

Mr. BRYANT of Tennessee. Let me go back to some of the—just a few more questions and I'll be concluded. Again, to both of you, of those applicants who state that they're noncitizens, what per-

centage are checked? What percentage of these people who tell you they're noncitizens are checked through the SAVE Program, if you have a number, an estimate?

Ms. JOHNSON-BULLARD. Well, if they're not applying for themselves and they're noncitizens, we don't check them through the SAVE Program if they're not, you know, an applicant for benefits.

Mr. BRYANT of Tennessee. How big a problem do you think that document fraud is and what does your department do when it discovers that the applicant is using fraudulent documents, a little bit different twist to that? First of all, what—how big a problem is document fraud?

Mr. ANTOLIN. At the moment, it is our sense that it's not a runaway problem because people pull out of the system before we get to that point, to that conclusion. My area of concern is on the Social Security numbers. And when someone says they are a U.S. citizen and they have a Social Security number and it checks out with the Social Security Administration, since we don't have a national identifier, that has to be good enough to go on. And I think that there is a problem—I used to practice law and I used to represent people in getting Social Security disability benefits. And there are people's whose wage records are incredibly messed up because other people have used their numbers and their names, and there's multiple wage records. So there is some amount of duplicate fraudulent use of good numbers out there. I don't know how much that is. Somebody from Social Security would have to address that for the committee, but that is a potential area of risk.

Mr. BRYANT of Tennessee. Again, let me thank each of you for being very patient, and you all are experienced, I think; you've been up here enough to know what goes on in Washington, and we're all over the place. You know, I apologize in terms of the—I know there have been people in and out all day today. I have a concurrent subcommittee hearing on crime that I'm missing but I was at earlier today, and it's just very hectic. Again, I appreciate your patience with us and courtesy, and you've all been very helpful to us.

And at this point I will simply adjourn the meeting. Thank you.

[Whereupon, at 1:40 p.m., the subcommittee adjourned.]

APPENDIX

Statement of Sharon M. Hughes, Executive Vice President, National Council of Agricultural Employers

The National Council of Agricultural Employers (NCAE) is a Washington, D.C. based national association representing growers and agricultural organizations on agricultural labor and employment issues. NCAE's membership includes agricultural employers in fifty states who hire about 75 percent of the national agricultural workforce. Its members include farm cooperatives, growers, packers, processors and agricultural associations. NCAE's experience representing agricultural employers gives the organization the background and experience to provide meaningful comments and insight into issues concerning employers and the problems they face in complying with the verification of eligibility for employment. NCAE respectfully requests that the Subcommittee examine the difficult position employers encounter when they attempt to verify the employment eligibility of a worker as required by the Immigration Reform and Control Act (IRCA), (8 U.S.C. § 1324a(b)) while at the same time avoiding discrimination on the basis of race, national origin or citizenship status under IRCA and Title VII of the Civil Rights Act of 1964, as amended.

The 1987 Census of Agriculture reported 818,347 farms hiring labor, and a gross payroll of $10.9 billion. In addition, the census reported that 272,000 farms used contract labor and paid a total of $1.8 billion in contract labor expenses. The U.S. Department of Labor summarized that as of May, 1993 there were 13,711 licensed farm labor contractors that reported employment of 488,223. While there is no equivalent data on employment by farmers, the 1982 Census of Agriculture, which reported roughly the same number of farms hiring labor as were reported in 1987, reported 4.856 million "hires" during the year. This statistic reflects the large amount of seasonal employment and multiple job holding which occurs in agriculture.

Compliance with the employer sanctions, employment eligibility verification and anti-discrimination provisions of IRCA poses a significant challenge to all employers, especially agricultural employers, many of whom are small family-run businesses. Numerous parts of the agricultural industry rely heavily upon migrant and seasonal workers, many of whom are from a variety of ethnic backgrounds and may be alien residents. As the above figures indicate, the large seasonal turnover of the workforce means that agricultural employers engage in the hiring and related Form I–9 completion process on a more regular basis than those in most other industries. The challenges of the employment verification process in an agricultural work environment are complicated by the fact that many job applicants do not speak, read or write the English language.

Agricultural Industry Education Efforts

NCAE would like to preface its testimony by stating that the agricultural industry has worked diligently to educate its employers regarding their obligations to properly verify the work eligibility of workers and avoid discriminating against work authorized aliens and persons because of their natural origin during the verification process. Shortly after IRCA's enactment, recognizing that the nature of the workforce in agriculture made them likely subjects of enforcement efforts by INS and DOL, agricultural organizations began extensive training of their members regarding IRCA compliance, often in conjunction with INS and DOL representatives.

In the past several years, the Justice Department's Office of the Special Counsel for Immigration Related Unfair Employment Practices (OSC) has provided NCAE with grants to conduct a nationwide educational campaign. NCAE has used these grants to educate agricultural employers and farm labor contractors about the immigration-related unfair employment practices provisions of IRCA and its subsequent

amendments. Both of these groups of employers employ large numbers of aliens for seasonal and some year round employment. NCAE's experience in this nationwide educational outreach indicates that there is a tremendous lack of knowledge regarding the anti-discrimination provisions of IRCA, especially its later enacted document abuse provisions.

It is no surprise that agricultural employers and farm labor contractors are heavily dependent on domestic and alien migrant and seasonal workers. OSC's anti-discrimination educational programs are essential for agricultural employers and contractors because they operate in a labor market environment with a large number of hires in which the chances for violation of both the employer sanctions and the anti-discrimination provisions of IRCA are very high.

The I–9 Verification Process Is Fraught With Uncertainty

Notwithstanding the industry's educational efforts, surveys of agricultural employers indicate that employment eligibility verification (the Form I–9 process) is still confusing and time-consuming. One of the major complaints about the Form I–9 process is that the number of acceptable documents for work authorization purposes is too large and that the acceptability of many documents is unclear.

This becomes especially difficult for agricultural employers during peak hiring periods when large numbers of workers are hired in the field. Completion of the Form I–9 for large numbers of field workers can be an arduous process, especially where there are language difficulties. Moreover, employers knowledgeable about the document abuse provisions of IRCA (8 U.S.C. § 1324b(a)(6)) are hesitant to refuse to accept uncommon documents about which they are uncertain as to their acceptability for work authorization purposes. Under IRCA's document abuse provisions, employers are charged with a per se violation of the Act if they request more or different documents than are required or refuse to accept tendered documents that appear on their face to be genuine.

NCAE would welcome efforts by Congress to reduce the number of documents acceptable for employment eligibility verification purposes. It is anticipated that this would decrease the amount of time required to process new hires and hopefully reduce the likelihood that conscientious employers would inadvertently violate IRCA's document abuse provisions while trying to ascertain the legitimacy of uncommon or questionable documents.

Employer Sanctions

One of the greatest areas of concern of agricultural employers is the almost irreconcilable conflict between the employer sanctions and anti-discrimination provisions of IRCA. Section 274A of IRCA prohibits the knowing hiring or retaining of persons unauthorized to work in the United States. Under IRCA, it is unlawful for an employer to knowingly hire an undocumented alien, to continue a person's employment after discovering the person is or has become unauthorized, knowingly obtain unauthorized workers through a contractor or subcontractor, or fail to verify the identity and employment authorization of all new hires and rehires.

As part of the I–9 verification process employers must, fill out the I–9 form for every worker hired after 1986, examine the worker's documents and verify that the worker is eligible to work in the United States. In addition, the I–9 form must be retained for at least 3 years. Failure to properly comply with IRCA can subject an employer to penalties and fines. Fines for employer sanctions range from up to $2,000 for the first violation, up to $5,000 for the second violation and up to $10,000 for the third and subsequent violations. In addition, if an employer engages in a pattern and practice violation, they can be fined up to $3,000 and spend 6 months in jail. Lastly, employers who commit I–9 paperwork violations can be fined $100 to $1,000 per violation.

Because of the nature of its work population, agricultural employers are well aware that their industry is under scrutiny by INS. They are also aware that the Clinton Administration has requested nearly a billion dollars for border control and to intensify and expand interior enforcement of IRCA's employer sanctions provisions, with a focus on agriculture and other "immigration-affected" industries. Enhanced enforcement of employer sanctions necessarily will drive employers to rigorously scrutinize documents during the verification process. However, additional efforts to screen job applicants for employment authorization will leave employers subject to charges of discrimination under IRCA.

Anti-Discrimination Provisions of IRCA

IRCA's employer sanctions provisions (Section 274A) send a strong, simple message: scrutinize employment documents carefully or face significant fines. IRCA's anti-discrimination provisions (Section 274B) send an equally strong and simple message: scrutinize employment documents too carefully or ask for them without using the precise lexicon required by the document abuse provisions and face significant fines. These provisions send a contradictory message to employers. Under Section 274B, it is unlawful for an employer to discriminate against an individual in hiring, recruiting or referring or discharging an individual on the basis of a person's citizenship status or national origin. An employer can be in violation of the document abuse provisions by requesting more or different documents than are required by law or by refusing to honor documents that, on their face, appear to be genuine.[1] For example, if an employer specifies which documents are acceptable, OSC will consider such specification can be deemed as document abuse subject to fines.

The document abuse provisions of IRCA (§274B(a)(6)) enacted in 1990 significantly aggravate the tension between the sanctions and anti-discrimination provisions of IRCA. It is unfortunate that the document abuse provisions were adopted as part of the conference report on the Immigration Act of 1990 (IMMACT 90) without having undergone the traditional route of enactment. Had there been debate in both Houses of Congress, it is possible that some of the practical problems resulting from the provisions could have been avoided.

While GAO studies have indicated that over-documentation of applicants was a problem, the broad application of the document abuse prohibitions have exacerbated compliance problems under IRCA by allowing for findings of liability without a knowledge standard. Thus, if an employer, in an effort to comply with what it perceives to be the intent of the employer sanctions provisions, makes a mistake in specifying a type of document or writing down two employment authorization documents in section 2 of Form I–9, it faces absolute liability.

At the same time the document abuse provisions were added, IMMACT 90 also created section 274C which provides enhanced civil penalties for document fraud. While the intent and need for such provisions is understandable, they sent a message to employers in direct contradiction to the new document abuse provisions—scrutinize documents more closely or face additional penalties.

Conflicts in IRCA Employer Sanctions and Anti-Discrimination Provisions

Conflicts between the underlying purposes of IRCA are a cause of great concern for agricultural employers. Agricultural employers recognized after enactment of IRCA that because of the diverse ethnic composition of its workforce, it would be a likely target for enforcement of the provisions of 274A. As noted above, the industry and NCAE undertook extensive educational efforts to inform employers and its members of their employment eligibility verification obligations. Agricultural employers often worked closely with INS and DOL officials to set up their hiring procedures in a manner that complied with the new law.

Initially, neither the industry nor INS considered document abuse as a type of discrimination under IRCA. After enactment of IRCA, there were few legal standards and little public education regarding the anti-discrimination provisions of the law. And even the INS was unclear as to what constituted discrimination under IRCA. There are examples of procedures created by employers with the oversight and approval of INS that were later determined to constitute document abuse by the Office of Special Counsel, INS' sister agency within the Justice Department.

In one notable example, representatives of INS advised a large agricultural entity to request INS issued documents from all applicants and to forward the "A" numbers to it for review. The organization complied. While OSC could not prove that any persons with proper documentation were denied a job as a result of the entity's requirement that applicants provide an INS-issued card if they had one, the entity was nonetheless charged with discrimination by OSC. The agricultural entity in question was assessed thousands of dollars in damages based on document abuse allegations, even though the procedures were adopted based on INS advice which resulted in no demonstrable harm to workers.

Employers can be charged with discrimination even when workers voluntarily present INS documents. For example, workers generally fill section one of Form I–9. If the worker is an alien, they must check the box signifying whether they are

[1] §274B(a)(6) prohibits employers from asking for more or different documents than are required under 274A(b) of the Act and from refusing to accept documents that on their face reasonably appear to be genuine.

a lawful permanent resident or an alien authorized to work. The applicant will often take out his/her INS-issued card in order to write down the required alien number. When the employer undertakes his responsibility in section 2 and requests to examine a document from list A, or list B and C, the alien will commonly present the same INS card he used to fill out section one only moments before. This process happens on a regular basis without any request by employers for INS documentation. Yet, if an OSC audit of employer records shows that a substantial number of alien employees provided an INS-issued document as a List A document, OSC will assume the employer is requiring that INS documents be provided.

Frustration Undermines IRCA's Legitimacy

There are numerous similar examples. The conflict between IRCA's employer sanctions and anti-discrimination provisions are a source of tremendous frustration for well-intended employers who believe they are complying with the intent of the law. A typical problem faced by the agricultural employer occurs when a large number of applicants show up during peak seasonal hiring periods. Employers face a challenge at the time of hire in communicating with the large number of applicants regarding their Form I–9 obligations in a manner that does not specify documents. Many workers ask the employer what type of documents the employer wants and cannot read the description of documents on the back of the Form I–9. Many applicants do not speak English and some do not read or write.

Under the document abuse provisions of 274B, employers face the totally confounding situation of having to read the entire list of documents on the back of Form I–9 to each worker in order to avoid specifying documents. When an employer has dozens of workers lined up for production and harvest jobs, such a procedure is impracticable and time-consuming. No one is more frustrated than the workers.

Yet, if the employer makes reference to a "mica" or some other short-hand expression for employment documents that almost all workers understand to mean a variety of acceptable documents, they face document abuse charges. When employers ask OSC for practical advise on how to avoid these problems, they seldom get a clear and practical answer because there is not one.

Other typical problems arise when INS provides employers with information that documents tendered by workers have "bad numbers." Once such information is provided, INS takes the position that the employer has constructive knowledge that they are violating 274A. Yet, if the employer fires the worker based on the alleged constructive knowledge and INS' information about the "bad number" proves to be incorrect, OSC will charge the employer with discrimination. OSC often advises employers not to rely on INS representations about the validity of documents because of inaccuracies in INS' database. Yet, if employers do try to obtain further verification of the employee's or applicant's employment eligibility, they face document abuse charges.

Fear of Sanctions and Anti-Discrimination Penalties Inhibits Participation in Pilot Projects

Because of the unclear and occasionally conflicting positions of OSC and INS related to constructive knowledge and what constitutes document abuse, agricultural employers have been hesitant to participate in the pilot document verification program sponsored by INS. While many agricultural employers would welcome the opportunity to obtain speedy determinations as to whether proffered employment eligibility documents are valid, they have been hesitant to participate in the program because of: 1) warnings about the inaccuracies in INS' database; 2) court decisions preventing INS from disclosing certain information related to job applicants; 3) the inability to obtain written communications from INS confirming that persons are unauthorized to work rather than the ambiguous statement that the document number offered does not appear to be valid; and 4) delays in the process which render the exercise less meaningful because of the short period of employment that many seasonal agricultural workers experience.

Other agricultural employers have experienced situations where applicants have provided documents with different names or some other discrepancy. When the employer defers a hiring decision until after the applicant attempts to clarify the discrepancy between documents, they are sued for discrimination. OSC then investigates and finds no discrimination. Yet, while conducting the investigation and auditing I–9 Forms, they may find a minor technical flaw in filling out Form I–9. For example, OSC may find that a hiring clerk recorded a List A INS document in Section 2 of the form, while writing the social security number down in Section 1 where requested, as well as under List B. The minor error of recording the social security number twice, once in Section 1 and again under List B of Section 2, becomes the

basis of an over-documentation charge carrying up to a $1,000 fine. OSC also may find out after interviewing field supervisors that they tell workers in a field hire situation as described above to have their "micas" or other documents ready.

As a result of such an OSC investigation, OSC may find that no discrimination occurred when the employer pointed out the discrepancy in documents, but nevertheless seek to assess the employer thousands of dollars in fines for document abuse. The fines are based on the large number of seasonal hires whose I–9 forms had the double listing of a social security card or assumption that all production workers asked for a "mica" or similar type of card were discrimination victims. Given the essentially strict liability standard for document abuse, it is easier and cheaper for employers to settle such cases than fight them, even though they were acting consistently with IRCA's intent.

The uncertainties felt by employers often are manifest by INS and OSC representatives during public presentations about IRCA. Often, the spokespersons from these two agencies within the Department of Justice do not agree on IRCA's requirements or cannot provide clear answers to common practical problems. The conflicting advice and policy positions provided by INS and OSC in such situations further undercuts respect for IRCA. NCAE's members often feel that they are put into a "damned if they do and damned if they don't" position where often exorbitant fines are demanded for technical violations that have resulted in no harm.

The above examples are not intended to disparage IRCA, INS or OSC. Given the inherent contradiction in the law, it is nearly impossible for INS and OSC to give "bright line" advice. The typical problems described above are illustrative of the practical problems encountered daily by agricultural employers trying to comply with a complex and inherently contradictory law. For the small family farmers who characterize NCAE's membership, who do not have a personnel staff or in-house experts for workplace compliance, it is almost impossible to comply with the contradictory provisions of IRCA. Yet, employers are expected to exercise the wisdom of Solomon in complying with a complicated law, often with workers with limited understanding of English under hiring situations that are fluid.

Danger of Increasing Discrimination or Intentional Noncompliance

As Congress undertakes consideration of the serious issue of immigration reform, there is a danger that in its zeal to enact more effective control measures, it may make a bad situation worse for employers. A review of pending bills indicates that many of them provide for a range of increased penalties and enforcement features that ultimately are more punitive to employers than existing law.[2] While NCAE supports the broad intent of many of these bills to curb illegal immigration and document fraud, its primary concern is that any new laws with stronger penalties or enforcement features that emphasize scrutiny of employment authorization documents are likely to cause employers to give greater emphasis to the employer sanctions provisions of IRCA. As discussed above, this may result in an increase in the seemingly inevitable discrimination charges, given the inherent tensions in IRCA. Increasing fines and penalties for violations of employer sanctions without addressing the underlying need to simplify the verification process may leave employers with little choice but to choose between violating the verification process or discriminating against workers.

The Subcommittee should carefully consider the consequences of increasing penalties for employer sanctions without fixing the current features of the law that make compliance without violating either the sanctions or discrimination provisions nearly impossible. Employers are presently confused and frustrated by the complexity of the law. Enhancement of penalties without simplification of the verification process can only exacerbate employers' frustrations and impose oppressive penalties that do not further the objective of controlling the employment of illegal aliens. The challenge Congress must confront is to reform immigration without increasing the incidence of discrimination or causing noncompliance with the sanctions provisions.

Recommended Objectives of Reform

NCAE recommends that the following objectives should be incorporated into any reform of IRCA:

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[2] Examples are S. 580 (enhanced penalties for unlawful employment of aliens and enhanced enforcement of wage and hour laws); S. 269 (expanding asset forfeiture of businesses for violations of immigration laws and new civil penalties for document fraud); H.R. 756 (expanded asset forfeiture provisions and increased authorization for INS investigators); and H.R. 560 (strengthened enforcement of wage and hour laws).

STREAMLINED AND SIMPLIFIED EMPLOYMENT ELIGIBILITY VERIFICATION

The number of acceptable documents for use in completion of the I–9 Form should be reduced in order to avoid confusion and uncertainty on the part of employers as to what is acceptable for employment verification;

If an acceptable and effective means of determining whether employment documents are legitimate through a computer-database or other system is implemented, employers must be afforded a good faith legal defense to discrimination charges if they rely upon such a system or the advice of INS or other government agencies regarding the employment eligibility of job applicants or employees. INS should be required to provide employers with a written or other recorded record whenever it informs employers that their employees are not work authorized. Employers should not be subject to sanctions under Section 274A on the basis of "constructive knowledge" if INS orally advises them that documentation is questionable. Employers currently take adverse action against applicants or employees based on oral INS advice at their own risk, facing discrimination charges if INS is wrong;

REVISED DOCUMENT ABUSE PROVISIONS

NCAE agrees that employers should not be able to arbitrarily exclude persons from a job by rejecting them if they have acceptable documentation. However, this well-intended purpose has been lost in the implementation of the document abuse provisions. The document abuse provisions of Section 274B (a)(6) must be narrowed in scope and revised to eliminate their current strict liability standard. These provisions were tacked onto the Conference Report of IMMACT 90 without normal congressional consideration and their enforcement evidences the lack of due consideration. Employers can be found liable simply for the choice of words they use in responding to questions about acceptable documents, regardless if anyone is denied a job or fired. An employer should not be liable (as OSC currently seeks to make them) because hiring personnel innocently or out of ignorance asked for an INS document, but accepted other permissible documents.

Because of the persistent lack of employer awareness of the document abuse provisions, employers should be given at least one warning prior to being subject to an enforcement action for document abuse. The phase-in of employer sanctions, shortly after IRCA's enactment, where employers were given warnings rather than fines, serves as a precedent for such an approach. In addition, OSC educational efforts should continue in this area. NCAE believes that continuation of the educational efforts mandated by IMMACT 90 are critical if greater understanding of employer compliance responsibilities is to be achieved. Education becomes especially critical if Congress decides to increase penalties and fines for violation of employer sanctions and anti-discrimination. Employers cannot comply with a complicated law without the requisite information necessary to fulfill their responsibilities.

The liability standard of Section 274B (a)(6) should be changed to impose liability only when it can be proven that an employer refused to hire an applicant because the applicant could or would not provide a document specified by the employer even though the applicant offered other acceptable documents. It should be made clear that an employer cannot be liable simply because it asked for a specific document without insisting that such document is the only acceptable one. This will eliminate the current inequity resultant from enforcement actions based on words used rather than adverse action taken by employers.

A limit on the maximum amount of civil fines that can be sought by OSC for document abuse should be imposed for a first offense. We recommend that the amount of fines for a first offense should be up to, but no greater than $10,000 for a single complaint, whether it is based on an individual claim or alleged pattern and practice violation. An escalating limit for subsequent offenses, such as currently exists for IRCA's employer sanctions penalty scheme, would be a reasonable approach.

This change is necessitated by the way OSC seeks civil penalties for document abuse. Because the fines sought by OSC for document abuse is usually based on the number of I–9 Forms in the employer's possession during the period for which they are seeking liability, astronomical fines are often demanded. Fines are based on the statutory amount of $100 to $1,000 per I–9 Form. For employers, such as those in agriculture, with a large turnover of seasonal workers (and consequently large numbers of I–9 Forms), the fines sought are usually $1,000 times the number of I–9 Forms. The prospect of facing such overwhelming liability and defending against it, compels settlements from employers as a matter of economics, rather than admission of liability.

We thank you for the opportunity to share our concerns.

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